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No. 97-

In the

Supreme Court of the United States

October Term, 1997

ELIZABETH WEAVER AND ROY VARNER,

Petitioners,

v.

HARVEY WOOD, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME JUDICIAL COURT FOR THE
COMMONWEALTH OF MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Mother Church of the Christian Science religion was established by its Founder with a form of government crucially dependent on the assignment to its members of specific rights and responsibilities. These rights and responsibilities in church governance were conferred to assure conformity by church officers with the rules laid down in the founding documents of the Church. The Church is now told by the State's highest court that, because the Founder of the Church gave members — including petitioners — participatory rights and responsibilities other than the right to *vote*, those members may not seek redress in the State's courts for violation of those rights and interference with those responsibilities wrought through a breach of the Church's founding rules by the very officers whom the assignment of enforceable rights and responsibilities to such members was designed to control. The questions presented are these:

1. Do the First and Fourteenth Amendments permit a State — in suits by church members to enforce the secular rules of church governance — to discriminate among religious bodies and religious adherents in allowing access to court, solely on the basis that the personal rights to participate in church governance given members by the church to which the disfavored adherents belong happen to take a form other than the right to *vote* on church matters?

2. Under the First and Fourteenth Amendments, may a State, by denying access to its civil courts in this manner to church members seeking to vindicate their rights to participate in church governance, effectively establish a church that has a different governing structure — one reposing unaccountable power in a self-perpetuating Board of officers — from that deliberately decreed by the church's Founder?

LIST OF PARTIES

All petitioners are named in the caption. Respondents are Virginia S. Harris, John L. Selover, Olga M. Chaffee, and Richard C. Bergenheim, each of whom was a Director of The First Church of Christ, Scientist, in Boston, Massachusetts (also known as The Mother Church) at the time the complaint in this case was filed; Al M. Carnesciali, also a Director of The Mother Church at the time the complaint was filed, who was at certain relevant times also a Trustee, and at other times the Manager of The Christian Science Publishing Society ("Publishing Society"), a trust established to manage certain Mother Church publishing activities; Harvey W. Wood and Jill Gooding, who were already at the time the complaint was filed former Directors of The Mother Church; John H. Hoagland, Jr., who was until April 1992 a Director of both The Christian Science Monitor Syndicate, Inc., and its wholly-owned-and-operated subsidiary, Monitor Television, Inc., of which he served as Chair during the 1990 and 1991 fiscal years, and who was also at certain relevant times one of the Trustees of the Publishing Society; Annetta Douglass, who served The Mother Church's media ventures as Executive Director of Radio and TV Programming until April 1992, who was President of The Christian Science Monitor Syndicate, Inc., and Monitor Television, Inc., and who also served as Manager of the Publishing Society; and J. Anthony Periton, Hallock Davis, Harry Schiering, and Honor Ramsay Hill, each of whom served at certain relevant times as a Trustee of the Publishing Society.

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OPINIONS BELOW

The opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts ("Supreme Judicial Court" or "S.J.C.") is reported at 680 N.E.2d 918 (Mass. 1997), and is reprinted along with the order of that court as Appendix A at page 1a. The opinion of the Superior Court of Suffolk County denying respondents' motion for summary judgment is unreported and is reprinted as Appendix B at page 12a. The opinion of the Superior Court of Suffolk County denying respondents' motion to dismiss is unreported and is reprinted as Appendix C at page 16a. The order of the Supreme Judicial Court denying petitioners' timely petition for rehearing is unreported and is reprinted as Appendix D at page 32a.

JURISDICTION

The judgment of the Supreme Judicial Court for the Commonwealth of Massachusetts was entered on June 19, 1997. A timely petition for rehearing was denied on August 5, 1997. See Appendix D at page 32a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging . . . the right of the people . . . to petition the Government for a redress of grievances.

U.S. Const. Amend. I.

Section One of the Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV.

STATEMENT OF THE CASE

Although it is couched as merely a denial of standing under state law, the decision below in fact defeats a central element of the structure of governance specified for the Christian Science religion by its Founder. It replaces a carefully constructed system of checks and balances with one that reposes unaccountable power in the hands of a self-perpetuating Board of Directors. The consequences of this decision, if it is permitted to stand, will be grave and pervasive ones for the Christian Science denomination, for the decision below effectively abolishes the church created by the Founder of Christian Science, and establishes in its place a new one.

By the decision below, petitioners Elizabeth Weaver, a Justice of the Michigan Supreme Court, and Roy Varner, a management consultant who lives in Texas, both of whom have been members for over thirty years of The First Church of Christ, Scientist, in Boston, Massachusetts, which is also known as The Mother Church of the Christian Science religion, were denied access to court to enforce their personal rights, based in contract, to participate in the governance of The Mother Church. Under the decision of Massachusetts' Supreme Judicial Court, they were denied standing to bring their suit against certain officers of The Mother Church solely on the basis that the form of religious association by which their church is organized entailed giving them rights to participate in the governance of the church that did not happen to involve voting on church matters. By discriminating among religions in the provision of access to court, that decision violates the Religion Clauses of the First Amendment, as well as the Due Process and Equal Protection Clauses of the Fourteenth Amendment under this Court's recent decision in *M.L.B.* v. *S.L.J.*, 117 S. Ct. 555 (1996). It stands in conflict with the law as it has been articulated in other states. And, because construction of the documents governing The Mother Church will always involve Massachusetts law, without this Court's intervention the decision below will leave adherents of the Christian Science faith in the United States — wherever they

live — permanently disadvantaged by comparison with adherents of other faiths. Only a grant of certiorari to review the decision below can prevent the effective and permanent nullification of the rights conferred upon the members of The Mother Church by the Church By-Laws written by the Founder of Christian Science. By the same token, failure to review the decision below will leave a radically different Christian Science religion than the one intended by its Founder.

A. The Structure of the Church's Governance and the Interests of its Members

Christian Science is a Protestant religious denomination founded in the United States in 1879 by Mary Baker Eddy and reorganized in its present form in 1892 by the September 1, 1892, Deed of Trust of Mary Baker Eddy (the "1892 Deed of Trust"). Mrs. Eddy is the Discoverer, Founder, Pastor Emeritus, and continuing Leader of this church in perpetuity through her Deeds of Trust, the By-Laws of The Mother Church, which were written by Mrs. Eddy and which are contained in the *Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts* (the "*Manual*" or the "*Church Manual*"), and her published writings, including the Christian Science textbook, *Science and Health with Key to the Scriptures*. She has no successor in her role; lay administrators and trustees transact Church business and preserve Christian Science, as she organized and taught it, for the benefit of current and future members of the Church. Christian Science grew in the years since its founding to the point where, at its peak, there were almost 3,300 Christian Science congregations around the world. At the time the events that gave rise to this lawsuit began, there were over 2,800 such congregations.

The Mother Church is not merely one of the many Christian Science congregations. The Christian Science church has but one Mother Church, of which all the other Christian Science congregations around the world are "branch churches." The Mother Church plays a central role in the protection and preservation of Christian Science as Mrs. Eddy taught it. As Mrs. Eddy wrote in the *Church Manual*: "In its relation to other Christian Science churches, in its By-Laws and self-government, The Mother Church

stands alone; it occupies a position that no other church can fill." Mary Baker Eddy, *Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts* ("*Manual*"), Art. XXIII, § 3 (89th ed. 1990).[1]

Not all adherents of Christian Science are members of The Mother Church. Some belong solely to their local congregation or "branch church." A By-Law of Christian Science mandates that "each branch church shall be distinctly democratic in its government." *Manual* Art. XXIII, § 10. The right to take part in the governance of the Christian Science faith held by all those who are members only of their local churches thus is a right to vote on decisions being made by their branch church.

Members of The Mother Church play a far more central role in the faith. Every branch church has some members who are also Members of The Mother Church. Indeed, Mother Church members are necessary for the very formation of a branch church. The By-Laws of The Mother Church provide:

> A branch church of The First Church of Christ, Scientist, Boston, Mass., shall not be organized with less than sixteen loyal Christian Scientists, four of whom are members of The Mother Church.

Manual Art. XXIII, § 7.

Similarly, a Member of The Mother Church must be present for the conduct of the services of a branch church. Christian Science has no clergy. Its sole pastor, designated by Mrs. Eddy in 1895 the "dual pastor" of the faith, is the King James version of the Bible and the Christian Science textbook *Science and Health with Key to the Scriptures* by Mary Baker Eddy. See *Manual* Art. XIV, § 1. Services are conducted primarily by a First Reader, who is assisted

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[1] The Mother Church's By-Laws, contained in the *Manual*, were written by Mrs. Eddy and she repeatedly revised them throughout her lifetime with the intention that they would become permanent and unchanging upon her death. See *Manual* Art. XXXV. Although the Rules and By-Laws contained in the Manual were written by Mrs. Eddy, she wrote that "[t]hey were impelled by a power not one's own." *Manual* at 3.

by a Second Reader. See *Manual* Art. III, §§ 2-4. Readers are lay members who read from the dual pastors, but who are forbidden to make any "explanatory" remarks about the Lesson-Sermon read from these texts because there are no clergy or ecclesiastical authorities in the religion beyond these books. See *id.* Art. III, § 6. Only members of The Mother Church are eligible to be Readers in branch churches. See *id.* Art. III, § 6.

Unsurprisingly, then, membership in The Mother Church is not given to any and all adherents of Christian Science. It is limited by the *Manual*, which describes admission to such central membership as the act of "unit[ing] with th[e] Church." *Id.* Art. V, § 2. In order to become a member of The Mother Church, one must, of course, be a believer in the doctrines of Christian Science. See *id.* Art. IV, § 1. One must also have his or her application "approved" by a member of The Mother Church before submitting it to the Clerk of the Church. See *id.* Art. V, § 2. In addition, a candidate for membership must also be recommended, and his or her application "countersigned," by a teacher of Christian Science or a Director of The Mother Church if the approver is not in one of these categories. See *id.* Article VI, § 2.

An applicant may be elected to membership in The Mother Church only by a majority vote of the Christian Science Board of Directors. See *Id.* Art. VI, § 3. If an applicant is rejected, he or she must be so informed, but there is no "oblig[ation] to report the cause for rejection." *Id.* Art. V, § 7.

The *Manual* of The Mother Church, which contains its By-Laws, gives members of The Mother Church specific duties and responsibilities. Only a member of The Mother Church has power to, among other things, approve an application for Mother Church membership, see *id.* Art. VI, § 2; form a branch church, see *id.* Art. XXIII, §§ 6, 7; serve as Reader in a branch church, see *id.* Art. III, § 6; form a university or college organization, see *id.* Art. XXIII, § 8; or become a teacher of Christian Science, see *id.* Art. XXX, § 8. Likewise, members of The Mother Church have a wide range of duties that set them apart from members of the general public — indeed, even from other adherents of the Christian Science faith. Members are required to pay a per capita tax to The Mother Church. See *id.* Art. VIII, § 13. They must subscribe to

church periodicals if they can afford them. See *id.* Art. VIII, § 14. A member of The Mother Church who is a First Reader in a branch church has "the duty . . . to enforce the discipline and by-laws of the church in which he is [a] Reader." *Id.* Art. III, § 7. There is also an array of duties that only members of The Mother Church have with respect to their own personal behavior. See *id.* Art. VIII.

As part of a delicate system of checks and balances, Mrs. Eddy's By-Laws also give members of The Mother Church particular personal rights — and impose particular personal obligations — to participate in the governance of the church. To begin with, members have general oversight duties and responsibilities. The Treasurer, Clerk and Committees are required to make reports to the membership of The Mother Church at regularly scheduled annual meetings. See *id.* Art. XIII, § 1. Members also have the right to receive specific information from the Christian Science Board of Directors. This self-perpetuating Board was originally constituted under the 1892 Deed of Trust, which conveyed the land upon which The Mother Church building was to be constructed, as "a perpetual body or corporation under and in accordance with section one, Chapter 39 of the Public Statutes of Massachusetts," 1892 Deed of Trust § 1 (reprinted as an Appendix to the *Manual*).[2] Its purpose is to "transac[t]" "[t]he business of The Mother Church." *Manual* Art. I, § 6. Its duties are spelled out in the *Manual*. These include providing financial information to the members of The Mother Church, who consequently have a concomitant right to receive that information:

> It shall be the duty of the Christian Science Board of Directors to have the books of the Church Treasurer audited semi-annually, and to report at the annual Church meeting the

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[2] In 1903, the number of Board Members was increased from four, as specified in the 1892 Deed of Trust, to five by amendment of Article I, §5 of the *Manual*. See App. 5a n.7. The Massachusetts Courts have authoritatively construed the *Manual* to refer to the same Christian Science Board of Directors as the 1892 Deed of Trust. See *Dittemore* v. *Dickey*, 144 N.E. 57, 60 (Mass. 1924); see also App. 5a n.7 ("the same Board referred to in the 1892 deed").

> amount of funds which the Church has on hand, the amount of its indebtedness and of its expenditures for the last year.

Id. Art. XXIV, § 3.

This information is also essential to the fulfillment of two other critical rights and obligations imposed upon members by the *Manual*. First:

> It is the duty of any member of this Church, and especially of one who has been or who is the First Reader of a church, to inform the Board of Directors of the failure of . . . any . . . officer in this Church to perform his official duties.

Id. Art. I, § 9. This responsibility runs particularly strongly to petitioner Varner, who is a former First Reader of a branch church in Houston, Texas. Members of The Mother Church in addition have a further right and obligation to bring to the Clerk of the Mother Church for adjudication any claim they may have of a failure by the Board of Directors to follow the *Manual*:

> If the Christian Science Board of Directors fails to fulfill the requirements of this By-Law [which, among other things, requires "obedience" to the "Tenets and By-Laws" of The Mother Church], and a member of this Church . . . shall complain thereof to the Clerk and the complaint be found valid, the Directors shall resign their office or perform their functions faithfully.

Id.

The *Manual* makes clear that The Mother Church's funds belong to the congregation, and not to the Board of Directors:

> The Christian Science Board of Directors owns the church edifices, with the land whereon they stand, legally; and the Church members own the aforesaid premises and buildings, beneficially. After the first church was built, the balance of the building funds, which remained in the hands of the Directors, *belonged to the Church, and not solely to the Directors*.

Id. Art. XXIV, § 2 (emphasis added). The 1892 Deed of Trust makes clear that the "Church" is not the Board of Directors or any other governing authority, but is the *members* of The Mother Church: "*The congregation* which shall worship in [the] church [to be built upon the land conveyed] shall be styled 'The First Church of Christ, Scientist.'" 1892 Deed of Trust § 6 (emphasis added).

An Article of the *Manual* entitled "Guardianship of Church Funds" provides members the right to have a Committee on Finance safeguard their interest in those funds. The *Manual* gives this Committee certain specific obligations to protect the members' interests, and, again, these obligations give rise to corresponding rights on the part of church members:

> [The] Committee on Finance . . . shall hold quarterly meetings and keep themselves thoroughly informed as to the real estate owned by this Church and the amount of funds received by the Treasurer of The Mother Church, who is individually responsible for said funds. They shall have the books of the Christian Science Board of Directors and the books of the Church Treasurer audited annually by an honest, competent accountant.

Manual Art. XXIV, § 4. The Finance Committee is given authority to examine bills against the Church, which may not be paid without its unanimous endorsement. The *Manual* provides that:

> Prior to paying bills against the Church, the Treasurer of this Church shall submit them all to said committee for examination. This committee shall decide thereupon by a unanimous vote, and its endorsement of the bills shall render them payable.

Id. Most importantly, the *Manual* gives the Finance Committee in its role as guardian of the members' interests further authority for financial oversight of the Board of Directors:

> In case of any possible future deviation from duty, the Committee on Finance shall visit the Board of Directors, and, in a Christian spirit and manner, demand that each member thereof comply with the By-Laws of the Church. If any

> Director fails to heed this admonition, he may be dismissed from office and the vacancy supplied by the Board.

Id. Art. XXIV, § 6. Indeed, the Finance Committee's obligation to keep itself "thoroughly informed" of The Mother Church's holdings would be meaningless were the committee not invested with these powers.

When an individual becomes a member of The Mother Church, he or she agrees to "subscribe to the Tenets and the By-Laws of the Church." *Id.* at 114 (Appendix) (Application Forms). As even respondents have conceded, the rights given to members of The Mother Church by the By-Laws are contractual in nature, part of the contractual agreement between the member and the Church. See, *e.g.*, *Kubilius* v. *Hawes Unitarian Congregational Church*, 79 N.E.2d 5, 9 (Mass. 1948); Respondents' Br. in the S.J.C. at 27. Indeed, the *Manual* explicitly envisions members of The Mother Church taking legal action on "case[s] . . . provided for in its By-Laws." *Manual* Art. XXII, § 9 (prohibiting any legal action by a member of The Mother Church that "relates to the person or to the property of Mary Baker Eddy," except those "provided for in [the] By-Laws," unless the member has first personally conferred with Mrs. Eddy).

There is nothing unusual about Mrs. Eddy's choice to use a document in organizing the church that might be enforced in the civil courts. The 1892 Deed of Trust, to give but one other example, is a legal document executed under the laws of the Commonwealth of Massachusetts. It is recorded in the Suffolk County Registry. Indeed, Mrs. Eddy investigated the civil laws of Massachusetts before organizing The Mother Church through the device of the 1892 Deed of Trust, see Norman Beasley, *The Cross and the Crown: The History of Christian Science* 260 (1952), and she provided in that Deed of Trust that The Mother Church could never be relocated, see 1892 Deed of Trust § 8, insuring that that civil law of Massachusetts would always control interpretation of the Deed.

B. Respondents' Violations of the Procedures Set Out by the *Manual*

Petitioners brought this suit in their capacity as members of The Mother Church to correct a failure by respondents — former and current members of the Board of Directors, Trustees of The Christian Science Publishing Society ("The Publishing Society"), and certain officers of The Publishing Society's subsidiary corporations — to adhere to the procedures of governance set out in the *Manual*. They sued to enforce the rights and responsibilities conferred upon them by that document. Specifically, the respondents' actions, described below, deprived petitioners of their contractual rights to a functioning Committee on Finance and to an accounting of Mother Church funds as provided for by the *Manual*, and consequently interfered with their ability to perform their *Manual*-mandated obligations.

Petitioners alleged that on July 1, 1980, the Board of Directors had promulgated a policy that, in substance, reduced the function of the Committee on Finance to a rubber stamp committee relegated simply to checking the accuracy of invoices, rather than ensuring the propriety of all expenditures as necessary for the proper functioning of the system of governance intended by Mrs. Eddy and required by the *Manual*. Furthermore, petitioners alleged that the Directors, despite the specific requirements of the *Manual*, refused to act in response to Committee on Finance requests for stringent financial controls to keep costs within the Board-approved budgets.

Petitioners also alleged that the possibility of membership oversight, envisioned in the *Manual*, was nullified by respondents through their refusal to provide meaningful financial figures in their annual reports to members, reports that are required by Article XXIV, § 3 of the *Manual*. In particular, respondents provided only aggregated figures when disaggregated figures would have been necessary to make the reports meaningful, and indeed, beginning in 1990, respondents altered their past practice, aggregating the balances of the unrestricted fund, the fund available for general Church purposes, and other restricted funds — balances that had previously been reported separately — apparently to cover up massive deficits that had jeopardized the ability of The Mother Church to meet its financial obligations.

These departures from the procedures required by the *Manual* were not without consequences. Between 1985 and 1992, respondents embarked upon a series of risky media ventures. Without the proper oversight envisioned by the *Manual*, respondents' actions resulted in losses between $400 and $500 million. By contrast, in the last year before these losses began to mount, 1986, the entire combined annual budget for The Mother Church and The Publishing Society had been only $54 million. (For many years, The Publishing Society, which was established by the separate January 25, 1898 Deed of Trust of Mary Baker Eddy (the "1898 Deed of Trust"), following Mrs. Eddy's direction, has published the daily, weekly, monthly and quarterly periodicals established by her, including *The Christian Science Monitor*, a daily newspaper.)

Because this case is about adherence to the procedures of church governance —- and *not* about the particulars of respondents' financial mismanagement of the church —- the details of these failed media ventures are not immediately relevant to petitioners' claim. Nonetheless, a brief description may help to underscore the practical significance for The Mother Church of respondents' failure described in the complaint to adhere to the procedures for governance laid down in the *Manual*.

At the end of the fiscal year ending April 30, 1987, The Mother Church was in a strong financial position, with an unrestricted fund balance in excess of $100 million, a surplus of income and contributions over expenditures of $20 million, and a Pension Plan, maintained for the benefit of retired employees and their families, with assets (before the 1989 fiscal year began) of approximately $136 million, largely invested in what are generally considered to be safe securities.

The complaint in this case alleges that, under respondents' direction, The Mother Church —- through the device of The Christian Science Monitor Syndicate, Inc., a corporation that, because it was set up under The Publishing Society, an entity separate from The Mother Church, see *Manual* Art. XXV, § 1, was itself arguably not subject to the detailed accounting requirements of the *Manual* —- acquired in 1986 a local television station, which, the Board of Directors has admitted, suffered operating deficits and capital costs totalling $61.7 million between the time of its

acquisition and 1992.[3] In 1985 The Mother Church began a television program which became weekly in 1986 and whose losses and capital costs reached $23.7 million. Respondents in the mid-1980s began a news radio program, called Monitor Radio, that suffered enormous losses.[4] In September, 1988, The Mother Church began a daily cable television program, World Monitor, which it terminated in 1992, and on which it lost $84 million.[5] The Directors also approved of a monthly magazine, also called *World Monitor*, which began publication in the fall of 1988 and which, before its closure, lost $36.9 million in operating deficits and capital expenditures.[6] Finally, on May 1, 1991, and despite the staggering pressures caused by these other imprudent ventures, respondents then in office introduced a 24-hour cable television station, The Monitor Channel, which, in the first year alone, suffered losses and capital expenditures of over $89 million.[7]

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[3] Revenues of this station, WQTV, Channel 68, in Boston were negligible, totalling, for example, only $703,000 in fiscal 1991 and $430,000 in fiscal 1992. In contrast, expenses reached in excess of $7 million annually.

[4] The complaint alleges that, although losses for Monitor Radio have not been disclosed, Donald Bowersock, the former Treasurer of The Mother Church, reported in June 1992 that operating and programming losses for shortwave radio and Monitor Radio had been $79 million.

[5] The Church was unable to sell the program to local and cable television stations, and it was placed only on the Discovery Channel, where its ratings were very low.

[6] As the complaint describes, the magazine was closed after the May 1993 issue.

[7] The complaint alleges that respondents attempted to interest investors in the cable venture, but there was inadequate interest, reflecting the unlikelihood of economic success. Nonetheless, respondents persisted in their plan, incurring losses of $18.6 million and capital costs of $23.5 million in fiscal 1991, even before the beginning of programming. In March 1992, the Directors, now under pressure from the media and from church members, attempted to sell the cable television channel. But because of its insignificant audience and high cost structure, they found no buyers. Unable to sell the station, respondents closed it. The estimated close-down costs for both The Monitor Channel and WQTV were $65.9

By June 1992, the unrestricted fund had been depleted by over $240 million. As of April 30, 1992, the unrestricted fund had, instead of a positive balance of $100 million, an admitted *deficit* of $114,698,000. In addition, respondents then in office took $40 million between 1989 and 1991 from the Pension Plan to capitalize their media ventures, claiming that the Plan was "overfunded" as a result of successful investing. Needing even more cash, they began in 1992 borrowing additional money from what was left in the Pension Plan. In the first two months of 1992, they borrowed $41.5 million from the Pension Plan. In the year ending April 30, 1993, they took an additional $22.8 million from the Pension Plan, characterizing it first as an additional loan, and then re-characterizing it as a "payout" to the unrestricted fund of The Mother Church. The result of all this was that The Mother Church was left effectively insolvent, and the Pension Plan held, instead of safe securities, $65 million worth of debt of the insolvent Mother Church.[8]

As one may readily imagine, the damage done to the Christian Science religion during this period went well beyond the financial. In 1982, there were 2,845 Christian Science churches and societies worldwide.[9] By 1993, there were only 2,467. More tellingly, the number of Christian Science practitioners — those who choose to help others meet physical and other challenges through prayer — declined between 1985 and 1993 by 46%, from 4,743 to only 2,575 worldwide.

C. Massachusetts Law and the Proceedings Below

As a general matter, Massachusetts law recognizes the standing to sue of any individual who has "suffered . . . legal harm." *Doe* v. *The Governor*, 412 N.E.2d 325, 326 (Mass. 1980). A violation of

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million.

[8] Indeed, in its audit report for the fiscal year ending April 30, 1992, Ernst & Young, The Mother Church's auditor, included a highly unusual footnote questioning the continued viability of The Mother Church as a "going concern."

[9] Christian Science "societies" hold public services, often in communities where the requirements for forming a branch church are not met.

a right conferred (or interference with an obligation imposed) by a contractual by-law is indisputably a sufficient injury to invoke the jurisdiction of the Massachusetts courts. See, *e.g.*, *Lopez* v. *Medford Community Ctr., Inc.*, 424 N.E.2d 229, 232-33 (Mass. 1981) (holding that plaintiffs who followed procedures for joining a charitable corporation set forth in its by-laws, but were denied membership, have standing); *Mitchell* v. *Albanian Orthodox Diocese in America*, 244 N.E.2d 276, 277-78 (Mass. 1969) (granting plaintiffs standing to enforce church by-law conferring right to vote on church members).

Massachusetts law contains another, prudential restriction on the exercise of judicial authority. Standing will not be granted to one who is deemed to have an inadequately particularized injury. A person must be able to show that he or she has interests "distinct from those of the general public." See *Lopez*, 424 N.E.2d at 232. This inquiry is distinct from that which determines whether an injury is sufficient to be cognizable; it involves an examination of the breadth of the class whose interests have been infringed. Cf., *e.g.*, *Allen* v. *Wright*, 468 U.S. 737, 751 (1984) (treating rule barring adjudication of generalized grievances distinctly from rule requiring injury).

The standing question of course does not depend on whether a plaintiff will be able ultimately to *succeed* on the merits of his or her claim that a right has been violated or an obligation interfered with. It turns rather on what Justice O'Connor, writing for this Court, has described as a "careful judicial examination of a complaint's allegations." *Id.* at 752.

Petitioners allege failure by respondents to perform two duties owed them under the system of mandated checks and balances set up by Mrs. Eddy: First, the Christian Science Board of Directors is required to provide *to the members of The Mother Church* a report on the finances of the Church. See *Manual* Art. XXIV, § 3. Second, the Board is required to permit the Committee on Finance to function in order to fulfill its role in protecting the interests *of the members* in church funds. This encompasses both submitting bills to the Committee on Finance for approval, see *id.* Art. XXIV, § 4, and respecting the demands of the Committee on Finance that they comply with Church by-laws. See *id.* Art. XXIV, § 6.

In the Superior Court, which is the state trial court, respondents moved to dismiss petitioners' complaint. In the relevant respects this motion was denied. See App. 29-31a. Justice Flannery concluded that the petitioners had standing to litigate their claims. The court held that "the individual plaintiffs, as members of The Mother Church, have entered into a contract with the church. Their complaint alleges various contractual breaches by the defendants. Although these breaches relate to the proper administration of church funds, the interests of the individual plaintiffs in the enforcement of the by-laws are distinct from the interests of the general public." App. 30a.[10] The trial court also held that proceeding with suit would not violate the Religion Clauses of the federal Constitution.[11]

Respondents then sought summary judgment. The Superior Court, now acting through Justice Volterra, again ruled against them. See App. 12-15a. The court held it "clear from the submissions that the

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[10] The trial court thus held that the interests of petitioners were distinct from the public interest in preventing abuses in the administration of funds given to public charities, an interest that, under Massachusetts law may be vindicated only in an action brought by the State's Attorney General. See App. 29-30a. The trial court did dismiss a corporate plaintiff, Members For The *Manual*, Inc., from the suit. See App. 30-31a. Members For The *Manual*, Inc., has not appealed this decision and is not a party before this Court.

[11] The trial court concluded that Count I, alleging ultra vires conduct in contravention of the *Manual*, and Count III, alleging ultra vires conduct in contravention of the 1898 Deed of Trust, which organized The Christian Science Publishing Society and imposed restrictions on its method of operation, could both be resolved by application of neutral principles of law, see *Jones* v. *Wolf*, 443 U.S. 595, 602 (1979), and therefore should not be dismissed, and that Count IV, which requested an accounting, was necessarily intertwined with those claims and also should not be dismissed. See App. 27-29a. The Court did dismiss Count II which alleged violation of Article XXIV, § 5 of the *Manual*. That provision states that "God requires wisdom, economy, and brotherly love to characterize all proceedings of the members of The Mother Church, The First Church of Christ, Scientist." The court concluded that Count II necessarily involved religious concepts and that, consequently, its adjudication was prohibited. See App. 28a. Petitioners have not appealed the dismissal of Count II, and no issue relating to that Count is now before this Court.

plaintiffs have standing to bring this action." App. 14a. It concluded that "the plaintiffs are members of The Mother Church in a special and unique manner separate and distinct from any member of the public." *Id.* As to cognizable interests, the court held that "the issues raised by [petitioners] deal with the governance of The Mother Church. Thus as 'members' they are lawfully entitled to seek judicial redress to insure that the defendant trustees comport themselves in accordance with the dictates of the wills, trusts, and *Manual* of Mrs. Eddy." App. 14-15a.[12]

Respondents were granted the right to bring an interlocutory appeal in the Appeals Court. See Mass. Gen. Laws ch. 231, § 118 (1995). Subsequently their application for direct review before the Supreme Judicial Court, the State's highest court, was granted. See Mass. Gen. Laws ch. 211, § 4A (1995) (providing that S.J.C. has power to transfer actions to itself from lower courts).

Despite petitioners' argument that failure to hear the case would violate their rights under the Free Exercise and Establishment Clauses of the First Amendment, see Petitioners' Br. in the S.J.C. at 49-50, the S.J.C concluded that petitioners lacked standing. It reversed the denial of summary judgment and remanded with instructions to dismiss.

The court did not deny the existence of members' personal rights and obligations to participate in the governance of The Mother Church growing out of the *Manual*. It did not purport to alter the background law that holds such interests generally cognizable in court. It held instead that, because of the *form* of the interests conveyed by the *Manual*, petitioners could not maintain their suit.

The court observed that "The Manual grants no voting rights to the members of the Church." App. 5a. It concluded that, as a matter of Massachusetts law, The Mother Church is a "public charity" established by the 1892 Deed of Trust, the 1898 Deed of Trust, and the residuary clause of Mrs. Eddy's will. The court then

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[12] The court also again rejected respondents' argument that the case was not justiciable under the federal Constitution, "adopt[ing] the teachings and conclusions of law of Justice Flannery without repeating them." See App. 14a; see also App. 14-15a (setting forth some further discussion of the question of justiciability and its constitutional implications).

stated:

> We have on occasion recognized a private plaintiff's standing to make claims against a public charity, but only where the plaintiff asserts 'interests in such organizations which are distinct from those of the general public.' In each such case the claim has arisen from a personal right that directly affects the individual member, *such as* where the member has a right to exercise a vote in connection with some aspect of the charity's affairs (a right not present here) and is prohibited from doing so.

App. 9a (emphasis added) (citing, *inter alia*, *Mitchell* v. *Albanian Orthodox Diocese in America*, 244 N.E.2d 276 (Mass. 1969) (civil court enforcing church by-law conveying right to vote on church members)).

The S.J.C. lumped together those upon whom are conferred personal rights to participate in the governance of public charities *other* than the "right to exercise a vote" — that is, those with interests such as those at issue in this case — no matter how significant those rights, with members of the general public, who of course have no sufficiently particularized interest to challenge the management of public charities. Indeed, the court stated that, in the absence of a peculiar *type* of right "such as . . . the . . . right to exercise a vote," *id.*, the State's Attorney General has exclusive jurisdiction to protect what it described as the "'public interest in the efficient and lawful operation of charitable corporations,'" *id.* (citation omitted), and — making clear its conclusion that petitioners were no better than undifferentiated members of the public — it cited in support of its decision cases in which individuals who sought to challenge the administration of public charities were held not to have standing because they "ha[ve] no interest . . . other than that of the general public." *Dillaway* v. *Burton*, 153 N.E. 13, 16 (Mass. 1926) (cited at App. 8a).[13]

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[13] The court stated that "[w]hile the plaintiffs' relationship with The Mother Church is indeed different from a member of the public who is not a member of the Church, we have never held that membership in a public

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charity, alone, is sufficient to give standing to pursue a claim that a charitable organization has been mismanaged or that its officials have acted *ultra vires*." App. 10a.

The S.J.C. also cited a 1921 case, *Krauthoff* v. *Attorney Gen.*, 132 N.E. 865 (Mass. 1921), in which some members of The Mother Church sued "[n]umerous persons" in a "multifarious" complaint, purportedly in order to "preserve and uphold the Church Manual," *id.* at 865, 866. See App. 8-9a. The Attorney General in that case filed a plea arguing that "this bill of complaint disclosed no interest of the plaintiffs in the charitable trusts referred to, 'except as adherents of said Church and as members of the public, as to which the plaintiffs are fully represented by the Attorney General'" in a separate bill in equity which he had brought. *Krauthoff* v. *Attorney Gen.*, 240 Mass. 88, 89-90 (1921) (reporter's summary of the case). The S.J.C. held in that case that the plaintiffs lacked standing, at least to the extent that the averments of their complaint proceeded upon the theory that the Church was a public charity. The court's ruling in *Krauthoff*, however, did not turn upon an assessment of the interests conferred upon Mother Church members by the *Manual*. Indeed, there is no examination of those interests at all. Rather, *Krauthoff* stands only for the basic proposition that, where "plaintiffs show no private interest," they will be found to have no standing to pursue their claim. See 132 N.E.2d at 866.

The S.J.C. also ruled below that petitioners did not have standing to enforce the 1898 Deed of Trust, which set up The Publishing Society and which mandates that its trustees not "incur liabilities beyond their ability to liquidate promptly from the current income of the business." The S.J.C. acknowledged that "the Church" was the beneficiary of the 1898 Deed of Trust, see App. 10a, and it did not purport to disturb the law of Massachusetts regarding the power of beneficiaries to enforce trusts. Indeed, it cited the Restatement (Second) of Trusts § 391 & comments c and d (1959), which state that, if a charitable trust is created for the benefit of an unincorporated association or a small class of persons, a member of the association or the class can sue the trustee for enforcement of the trust. See App. 11a. With respect to petitioner church members, however, the Court held, in essence, that petitioners "have not . . . demonstrated that they are beneficiaries of any of Eddy's trusts in any legal sense" because they had no "personal rights in the Publishing Society or its assets," that is, rights on the basis of which one could lay claim to trust assets. App. 10-11a.

1. The decision below violates the Religion Clauses of the First Amendment and, because it works a discrimination in access to courts on the basis of the constitutionally-protected freedom of religious association, violates Due Process and Equal Protection as well.

The court below has abandoned its traditional rule of standing that the invasion of any personal interest that differentiates a plaintiff from the general public will be sufficient to confer standing upon him or her. As applied to religious adherents, the S.J.C.'s new rule discriminates unconstitutionally among such adherents based upon the very structure of internal governance of the church to which they belong. It does so by decreeing that a church member who is aggrieved by a governance violation has standing where he or she has been denied a right to *vote* conferred by a church by-law (or denied, at least in theory, some similar "personal right that directly affects the individual member"), *but* that church members have *no* standing when they are aggrieved by a governance violation that infringes upon *other* kinds of specific, church by-law-conferred personal rights, or interferes with other kinds of specific, by-law-imposed personal obligations, to participate in church governance — *no matter how significant a role those rights or obligations play in the governance of the church.*

This case, in which petitioners have personal interests as church members that differentiate them from the general public, itself affords a telling example of the operation of this new rule. Petitioners have been held to have no standing despite their rights and responsibilities conferred by the *Manual* to receive meaningful financial information from the Directors; to receive the protection, for funds held by the Directors for petitioners' benefit, afforded by a functioning Committee on Finance; and to be in a position meaningfully to carry out their *Manual*-imposed obligations of oversight. A state that allows private church members to sue in cases such as this one whenever those members make a claim as plaintiffs arising out of a "personal right that directly affects the individual member," cannot so define the concept of "personal right" as to penalize or nullify the decision of the church's constituting authority to have certain members participate personally *not* by voting but by, for example, receiving, reviewing and acting upon reports bearing on compliance of the church directors with applicable rules of governance.

a. First, because it discriminates in providing *access to courts* based on the way in which one has exercised his or her Free Exercise right of religious association, the S.J.C.'s standing rule violates both Due Process and Equal Protection. This Court has long held that the state may not deny an individual access to court simply because that person seeks to exercise a constitutionally protected — and indeed sometimes even lesser — "associational right[]," *M.L.B.* v. *S.L.J.*, 117 S.Ct. 555, 564 (1996). See, *e.g.*, *Lindsey* v. *Normet*, 405 U.S. 56, 79 (1972) (striking down a financial barrier to appeal faced only by tenants appealing adverse eviction judgments); *Boddie* v. *Connecticut*, 401 U.S. 371, 374 (1971) (holding that a state may not impose even a fee requirement upon litigants if it would burden their right to dissolve a marriage); see also *Griffin* v. *Illinois*, 351 U.S. 12, 24 (1956) (Frankfurter, J., concurring in judgment) (state may not "bolt the door to equal justice"). Most recently, in *M.L.B.* v. *S.L.J.*, this Court struck down a Mississippi law whose requirement that indigents pay certain fees for purposes of appeal prevented an indigent mother from appealing the termination of her parental rights. Because a basic associational right was at stake, the Court applied a significantly heightened level of scrutiny to the Mississippi statute even though the case could not "be resolved by resort to easy slogans or pigeonhole analysis." 117 S.Ct. at 566, 567-68 (internal quotation marks and citation omitted). The Court found that the statute violated both the Equal Protection and Due Process Clauses, noting that the case implicated an area where "[d]ue process and equal protection principles converge." *Id.* at 566 (internal quotation marks and citation omitted).

The S.J.C.'s unprecedented ruling, which denies access not merely to an appeal, but to a court of first instance, on the basis of the structure of internal governance of the religion involved — and which imposes not only a financial barrier but an absolute bar — cannot be squared with *M.L.B.* Both cases involve the denial of access to the judicial process — a form of "petition . . . for a redress of grievances" under the First Amendment — through the operation of a facially-neutral law, with a resulting burden on a fundamental associational right. In *M.L.B.*, that fundamental right was plaintiff's freedom of family association; here it is plaintiffs' fundamental constitutional right of religious association — the right to practice one's religion according to its Founder's chosen means

of structuring members' participation in the governance of their church. See, *e.g.*, *Wisconsin* v. *Yoder*, 406 U.S. 205, 215-20 (1972); *Cantwell* v. *Connecticut*, 310 U.S. 296, 303-07 (1940). And indeed, there can be no more inherently "unreasoned distinction[]" in the provision of access to courts, *Rinaldi* v. *Yeager*, 384 U.S. 305, 310 (1966), no more "capriciou[s] or arbitrar[y]" basis for denial of the equal right to litigate, *Lindsey*, 405 U.S. at 77, than to make it turn on how one has chosen to exercise a First Amendment right.

b. The restriction imposed by the S.J.C. also works a *direct* violation of both the Free Exercise and Establishment Clauses of the First Amendment as applied through the Due Process Clause of the Fourteenth Amendment. The decision below denies some religious associations — including The Mother Church — access not only to court, but to otherwise available tools of private law as well.

Mrs. Eddy intentionally chose secular legal documents, Deeds of Trust, in setting up her church. The 1892 Deed of Trust purports to incorporate the Christian Science Board of Directors under a Massachusetts statute, and both the 1892 and 1898 Deeds of Trust were duly registered with the Suffolk County registry. Likewise, the By-Laws contained in the *Manual* form a contract under Massachusetts law. These by-laws give members of The Mother Church specific rights to participate directly in the actual governance of that church — a central role in its governance far more important than that of those who are members of a branch church alone. Yet the court below held that the legal obligations imposed by this contract are not enforceable through the civil courts by its beneficiaries — solely because of the *form* of personal right to participate in church governance given members of the church under the structure chosen by Mrs. Eddy. By contrast, standing under the decision below would ordinarily be given to members of other churches — indeed, *to members of Christian Science branch churches* — because *they* have the right to cast what might prove to be a purely symbolic vote. The right to use the generally-available legal tools of associational organization and dispute resolution, however, cannot constitutionally be denied on this basis to those who would organize or participate in religious associations. Cf. *McDaniel* v. *Paty*, 435 U.S. 618, 626 (1978) (plurality opinion) (under the Free Exercise Clause, an individual cannot be denied

generally-available right to hold office on the ground that he is a member of the clergy); *id.* at 632 (Brennan, J., concurring in judgment) (as a matter of Free Exercise, "willingness to eschew certain protected religious practices" cannot be made the basis for a governmental classification).

Although the rule adopted by the S.J.C. purports to apply to all public charities, it is not protected under *Employment Division* v. *Smith*, 494 U.S. 872 (1990), from invalidation as applied to religious societies such as The Mother Church. *Smith* of course does not purport to prohibit all as-applied challenges under the Free Exercise Clause. Rather, *Smith* makes clear that the rule it announces — that the compelling state interest test under the Free Exercise Clause will not be used in assessing challenges to facially-neutral laws of general applicability — does not apply in circumstances that "len[d] [themselves] to individualized governmental assessment." 494 U.S. at 884 (distinguishing *Sherbert* v. *Verner*, 374 U.S. 398 (1963)). In such circumstances — in contrast to cases where the government seeks to apply "an across-the-board criminal prohibition on a particular form of conduct" — a requirement of governmental compliance with Free Exercise principles will not permit the claimant "'to become a law unto himself.'" *Id.* at 884-85 (internal quotation marks and citation omitted). Determining whether there is standing of course requires a case-by-case assessment of the interests alleged to be infringed. It necessarily involves precisely the kind of individualized assessment described in *Smith*. Thus even under this Court's decision in *Smith*, the application to religious societies such as The Mother Church of the rule of standing announced by the S.J.C. works a forbidden interference with the Free Exercise of religion.

c. Viewed from the other side, the limitation on standing to sue imposed by the S.J.C. amounts to an impermissible Establishment of Religion as well, for the decision below replaces the secular legal mechanisms of dispute resolution otherwise provided by Massachusetts law with essentially blind deference to the unilateral choices made by certain church officers, here the Board of Directors. The rule employed by the S.J.C. is closely analogous to the circumstance envisioned by then-Justice Rehnquist when he wrote in *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976):

> To make available the coercive powers of civil courts to rubber-stamp . . . decisions of [certain] religious associations, when such deference is not accorded similar acts of secular voluntary associations, would . . . create . . . serious problems under the Establishment Clause.

Id. at 734 (Rehnquist, J., joined by Stevens, J., dissenting).

Indeed, the S.J.C. decision "establishes" a new religion in a *literal* sense that conveys the importance of the decision below for the Christian Science denomination and for the nation. By failing to permit members of The Mother Church to vindicate in the civil courts their rights under the *Manual* to participate in church governance, the S.J.C. has altered the Church from the one envisioned by Mrs. Eddy, with its complex systems of checks and balances, to one with an all-powerful, self-perpetuating Board of Directors, a Board whose decisions are effectively immune from scrutiny. This Court has made clear that the Establishment Clause, intended to secure religious liberty, is designed among other things to protect *religion* from "the demeaning effects of any governmental embrace." *Lee* v. *Weisman*, 505 U.S. 577, 627 (1992) (Souter, J., concurring). The judicial action taken below by the highest court of a single state violates the promise of the Establishment Clause by interfering in a profound way with the very structure of the Christian Science denomination. For that reason alone, review by this Court is warranted.

d. Finally, the S.J.C.'s new standing rule, as applied to religious organizations, discriminates among religions in violation of the Establishment Clause. In this case, the discrimination takes the form of differential access to the state's judicial system and to the state legal system's tools of private-law dispute resolution. The S.J.C.'s holding *grants* members of fully democratic or radically egalitarian religious societies that confer the right to vote on all — including, presumably, members of branch churches of Christian Science who, despite their voting rights, have a far less important role in governance than do petitioners — access to the court system to enforce their interests as church members in lawful church governance. At the same time it *denies* — to members of religious societies that confer on members personal rights (or impose upon

them personal obligations) to participate in church governance that are different from, but no less significant than, the right to vote — the ability to enforce functionally similar, virtually identical, or indeed even stronger interests. Such discrimination violates "[t]he clearest command of the Establishment Clause." *Larson* v. *Valente*, 456 U.S. 228, 244 (1982); see *Corporation of Presiding Bishop* v. *Amos*, 483 U.S. 327, 339 (1987); see also *McDaniel*, 435 U.S. at 638 (Brennan, J., concurring in judgment) ("State governments . . . have been required to refrain from favoring the tenets or adherents of any religion . . . .").

Because of this basic principle, *amici* who supported *respondents* below urged the S.J.C. not to adopt a rule that would prefer one type of religious denomination over another. See Br. *Amicus Curiae* of Americans United for Separation of Church and State, *et al.* ("Br. *Amicus Curiae*") in the S.J.C. at 8. Yet that is precisely what the S.J.C. has done. And, as the S.J.C.'s cases make clear, the discrimination wrought by the decision below is not merely hypothetical. Compare *Mitchell* v. *Albanian Orthodox Diocese in America*, 244 N.E.2d at 279 (enforcing church by-laws — "the by-laws of a Massachusetts corporation which constitute a contract between the members and the Diocese" — conveying the right to vote on church members and determining that "proper action" was not "taken under the by-laws"), with *Weaver*, App. 1a (opinion below) (refusing to enforce By-Laws conveying different rights to participate in church governance).

2. No other state has so limited the availability of courts for church members who seek resolution of disputes concerning church governance.

No other court in the United States has chosen to limit standing on the basis of the *form* in which rights to participate in church governance are conferred upon church members. Indeed, the decision below is in square conflict with controlling authority from other states and the District of Columbia about the availability of courts for adjudication of church governance disputes.

In *Mount Jezreel Christians Without a Home* v. *Board of Trustees of Mount Jezreel Baptist Church*, 582 A.2d 237 (D.C. 1990), the District of Columbia Court of Appeals held that individual church

members had standing to bring suit against a church's trustees "'to challenge a series of ultra vires actions by the . . . Board of Trustees'" and the pastor. *Id.* at 238. In that case, the church was incorporated "for the purpose of religious worship . . . and holding services . . . ." *Id.* at 239. The court held, without regard to the right of the members of the congregation to vote, that "the members of the congregation . . . have standing to sue the trustees in the event that the trust property is used or disposed of in a manner contrary to the stated purposes of the trust." *Id.* (footnote omitted) (citing, *inter alia*, Restatement (Second) of Trusts § 391 (1959)).

The law is similar in Georgia. Thus, in *Crocker* v. *Stevens*, 435 S.E.2d 690 (Ga. Ct. App. 1993), for example, members of a church were found to have standing to complain that church authorities had "diver[ted] . . . the church property from the purpose for which the church and its assets had been devoted," again without regard to whether their right to vote has been impaired. *Id.* at 234. A Georgia statute ensures this result: "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but, when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted . . . ." Ga. Code Ann. § 14-5-45 (1996); see *Crocker*, 435 S.E.2d at 695 (quoting this provision).

In North Carolina it has long been clear that "an individual member of a religious society" has an interest in having church property put to the purposes for which it was designed "sufficient to enable him to bring an action to protect the common interests of fellow members." *United Church of God, Inc.* v. *McLendon*, 344 S.E.2d 373, 375 (N.C. Ct. App. 1986); see *Nash* v. *Sutton*, 23 S.E. 178, 179 (N.C. 1895).

Similarly in Texas, a "member or parishioner of [a] specific religious organization for whose benefit [a] trust was created" can sue to enforce that trust, without regard to the form of his or her right to participate in church governance. See *Gray* v. *Saint Matthews Cathedral Endowment Fund, Inc.*, 544 S.W.2d 488, 490 (Tex. Civ. App. 1976). This is simply an application of the general rule articulated by one Texas court as follows:

> [N]otwithstanding that a trust may be charitable in character and may look generally to the benefit of the public, yet if by the

> terms of the instrument creating the trust it is possible to ascertain definite persons or groups as beneficiaries, they have a special or active interest in the trust as justifies a standing to maintain an action to enforce it. The foregoing proposition is almost universally accepted. And it has been recognized by a number of Texas cases.

Id. (citing, *inter alia*, Restatement (Second) of Trusts § 391 (1959); other citations omitted). In that case, the court specifically rejected the contention that anything other than church membership was required to confer standing:

> Appellees maintain that appellant must have an interest different from the other parishioners in order to have standing, but that is not the requirement. He must have an interest different from that of the public at large. He need not have an interest different from the other parishioners or pewholders.

Id. at 491.

Under the law of any of these states — and indeed, under the law of all the other states that actually follow the Restatement (Second) of Trusts — petitioners would have had standing to pursue their claims that church officers departed from the terms of governance set out in the *Manual*, regardless of the form of right to participate in the governance of the church that was infringed. The S.J.C. has thus adopted a rule that departs sharply from those of other states. As a result of the S.J.C.'s decision, and despite the command of the First Amendment, the rights of religious adherents to enforce their personal interests in participation in church governance now vary depending on whether the church is chartered in Massachusetts or in one of the other 49 states or the District of Columbia.

3. **Because The Mother Church is located in Massachusetts, and the Deeds and Manual must be construed according to Massachusetts law, this court's involvement is necessary if members of The Mother Church are not to be permanently disadvantaged by comparison with adherents of other religions.**

Review in this case is independently warranted because of the

importance of the S.J.C.'s decision, which imposes an essentially insurmountable restriction on members of The Mother Church seeking to enforce their rights to participate in church governance and to ensure that their church operates according to Mrs. Eddy's design.

Under the church structure chosen by Mrs. Eddy, The Mother Church of Christian Science is geographically located in Boston. Consequently, every reported decision construing the governance provisions of the *Manual* and the Deeds of Trust has been rendered by a Massachusetts court. See, *e.g.*, *Dittemore* v. *Dickey*, 144 N.E. 57, 61-63 (Mass. 1924); *Eustace* v. *Dickey*, 132 N.E. 852, 855-63 (Mass. 1921). Thus, despite the different rule that applies in the other states, the decision of the S.J.C. below will — unless it is reversed by this Court — almost certainly be the *final* word on whether members of *this* church, the central church of the Christian Science denomination, are able to enforce the personal rights to participate in the governance of their church intended to be given them by their church's founder, as members of other churches in the United States are.

Furthermore, even if a court of another state were somehow able to exercise jurisdiction over a dispute about the adherence of Mother Church officers to the formalities of governance set out in the *Manual*, it is likely that the S.J.C.'s standing decision would be understood to control. As those few non-Massachusetts cases that have construed the Trust documents make clear, the meaning of *their* provisions is a matter of Massachusetts law. See, *e.g.*, *Succession of Fisher*, 103 So.2d 276, 279-80 (La. 1958) (examining the nature of The Mother Church to see if it is legally capable of taking a donation *mortis causa*). Although the decision below is in fact only a reflection of the novel and unprecedented approach to standing taken by the Massachusetts courts — an approach that is at variance with that of other states, and that might not be followed were another state's court to feel free to construe the *Manual de novo* — it will undoubtedly be treated as a binding construction of the contractual *Manual* provisions by courts of other jurisdictions. The consequent size of the stakes here — the Free Exercise and Establishment Clause rights of all the members of the Christian Science Mother Church — provide an additional reason for review.

An exercise of this Court's certiorari jurisdiction in a case such as this cannot wait for a split in authority on the standing of members of *this particular church* because such a split can never occur. Indeed, only a grant of certiorari to review the decision below can prevent the effective and permanent nullification of the rights conferred upon the members of The Mother Church in the By-Laws written by Mrs. Eddy.

4. It would not violate the Religion Clauses for the civil courts to adjudicate the merits of this dispute.

Finally, respondents argued below that, regardless of the standing question, adjudication of the merits of this dispute would violate the Religion Clauses. This contention is plainly wrong.

It is of course true that civil courts are forbidden to resolve "controversies over religious doctrine and practice." *Serbian Orthodox Diocese*, 426 U.S. at 710. Consequently, if the decision of this case turned on resolution of an ecclesiastical question, adjudication would indeed be barred by the First Amendment.

But the document on whose construction this case turns is *not* an ecclesiastical document; the question whether the Committee on Finance has been permitted to do the job described in the by-laws, just to give one example, is not "an ecclesiastical determination." *Id.* at 711. This document contains grist of the civil court mill: the by-laws of a voluntary association, written in plainly secular terms. Its use reflects a decision by Mrs. Eddy that parties within The Mother Church aggrieved by departures from the formalities of this document might have recourse to the civil courts. That Mrs. Eddy described the By-Laws as "impelled by a power not one's own" does not alter their obviously secular character, even if one chooses to characterize her decision to use these tools of civic organization and dispute resolution as "divinely inspired." The *Manual*, along with the trusts that created The Mother Church and The Publishing Society, which are registered in the Suffolk County registry, have been construed by the civil courts of Massachusetts, including the Supreme Judicial Court, in every instance in which its jurisdiction was invoked and in which it concluded that a proper plaintiff was before it. See, *e.g.*, *Dittemore*, 144 N.E. at 59-63; *id.* at 62 ("The courts . . . ascertain whether there has been compliance with the essential formalities prescribed by the rules of the society or

organization, whether the proceedings have been regular, and whether the decision is within the scope of the jurisdiction."); *Eustace*, 132 N.E. at 855-63.

Indeed, the Directors of The Mother Church have themselves invoked civil court interpretation of the *Manual* when it has been in their interest. See, *e.g.*, *Jandron* v. *Zuendel*, 139 F. Supp. 887, 887-888 (N.D. Ohio 1955) ("Plaintiffs are the directors and trustees of [The Mother Church] . . . . [I]n support of their claim that they are the highest authority and judicatory of the Christian Science denomination, [they] have submitted the 'Manual of The Mother Church . . . ,' affidavits of prominent Christian Scientists, and briefs in which the pronouncements of other courts on this matter are cited."). In fact, among the Trustees and Directors who have invoked the jurisdiction of the civil courts to enforce the terms of the *Manual* are three of respondents, Harvey Wood and John Selover, who were members of the Board of Directors, and J. Anthony Periton, who was a Trustee of The Publishing Society, during the time *Christian Science Board of Directors* v. *Evans*, 520 A.2d 1347 (N.J. 1987), was being prosecuted by the Board and the Trustees in the courts of New Jersey.

This Court has recognized that civil courts are permitted to resolve disputes over church polity and administration, as well as disputes over church property, so long as doing so does not require resolution of "underlying controversies over religious doctrine." *Serbian Orthodox Diocese*, 426 U.S. at 710; see *id.* ("[T]he [First] Amendment . . . commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. This principle applies with equal force to church disputes over church polity and church administration.") (internal quotation marks and citation omitted); see also *Jones* v. *Wolf*, 443 U.S. 595, 604 (1979) (holding that civil courts may apply neutral principles to interpret the "deed, the corporate charter, or the constitution" of a church unless it incorporates religious concepts such that its interpretation would involve resolution of "a religious controversy"). An examination in context of the passages in the decisions of this Court that refer to limits on the civil courts' power to adjudicate questions of "internal organization," see *Serbian Orthodox Diocese*, 426 U.S. at 713, makes clear that these limits exist only where decisions about such questions by church authorities are

"ecclesiastical actions." *Id.*; accord *Watson* v. *Jones*, 80 U.S. 679, 733 (1872) (calling for avoidance of reaching "matter[s] which concern . . . ecclesiastical government"). See also *Serbian Orthodox Diocese* at 715-716 ("final authority with respect to the promulgation and interpretation of *all* matters of church . . . internal organization rests with the Holy Assembly") (emphasis in original); *id.* at 721.

In an *amicus* brief below, several religious organizations argued that "the allocation of authority within a church is inherently a religious question." Br. *Amicus Curiae* in S.J.C. at 11. "Freedom of religion," however, does not always mean freedom of religious *authorities* to do what they please, regardless of the rights of the adherents of their religion. See, *e.g.*, *Wolf*, 443 U.S. at 605. It all depends on the way in which the particular religion is organized. See *id.* In fact, since limits on civil court adjudication of religious questions were first articulated by this Court, *Watson*, 80 U.S. 679, it has been clear that resort to civil adjudication of church-related disputes in secular terms is permitted whenever that is what the religious association "itself provides for," *id.* at 728-29, which in turn is what Mrs. Eddy ensured when she chose to constitute her church through the use of the tools of the civil law.

Of course this *must* be the rule, since it would violate the Free Exercise Clause were religious organizations *not* free to provide, on an equal footing with their secular counterparts, that resolution of disputes of governance should be left to the civil court system. See *supra* at 21-22. And indeed, suits like this in which members of churches allege that actions of church officers were ultra vires and in violation of the members' rights to participate in church governance under church by-laws have routinely been permitted not only by the Massachusetts courts in the cases cited above, but by courts throughout the United States. See, *e.g.*, *Mount Jezreel Christians Without a Home*, 582 A.2d at 239. This Court should not be dissuaded from granting review of the S.J.C.'s aberrant and dangerously intrusive standing decision by the notion that civil court action on the merits of this case could raise even a minor constitutional concern.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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November 3, 1997

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR
THE COMMONWEALTH

AT BOSTON, June 19, 1997

IN THE CASE NO. S.J.C.-07156

ELIZABETH A. WEAVER & another
vs.
HARVEY W. WOOD & others.

pending in the Superior Court Department of the Trial Court for the County of Suffolk No. 93-07320

ORDERED, that the following entry be made in the docket; viz., --

We vacate the ruling of the judge below denying the defendants' motion for summary judgment, and remand this matter to the Superior Court for entry of a judgment dismissing this action.

BY THE COURT,

/s/ Jean M. Kennett, CLERK

June 19, 1997

SJC-07156

ELIZABETH A. WEAVER & another[1] vs.
HARVEY W. WOOD & others.[2]

Suffolk. January 7, 1997 - June 19, 1997.

Present: Wilkins, C.J., Abrams, Lynch, O'Connor, Greaney, Fried, & Marshall, JJ.

Practice, Civil, Standing. Trust, Charitable trust, Beneficiary. Charity. Attorney General.

Civil action commenced in the Superior Court Department on December 30, 1993.

The case was heard by Guy Volterra, J., on a motion for summary judgment.

Leave to prosecute an interlocutory appeal was allowed in the Appeals Court by George Jacobs, J. The Supreme Judicial Court granted an application for direct review.

Stephen M. Shapiro, Chicago, Illinois (Damian R. LaPlaca, Boston, with him) for defendants.
Cerise H. Lim-Epstein, Boston (Mary M. Diggins with her) for

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[1] Roy D. Varner.

[2] Virginia S. Harris, John L. Selover, Olga M. Chaffee, Richard C. Bergenheim, Al M. Carnesciali, Jill Gooding, John H. Hoagland, Annetta Douglass, J. Anthony Periton, Hallock Davis, Harry Schiering, and Honor Ramsay Hill. Each of the defendants is a present or former director, trustee, or officer of either the First Church of Christ, Scientist, in Boston or The Christian Science Publishing Society, or both.

plaintiffs.
Douglas Laycock, Austin, Texas, William L. Patton, & Laurie R. Wallach, Boston, for Americans United for Separation of Church and State & others, amici curiae, submitted a brief.

MARSHALL, J. Two members of the First Church of Christ, Scientist, in Boston (Church)[3] seek to challenge decisions of the directors of the Church and its publishing arm, The Christian Science Publishing Society (Publishing Society), to expand the Publishing Society's activities in the electronic media. The plaintiffs claim that the defendants failed to abide by the Church's relevant governing documents when they authorized major investments in television ventures in the late 1980's and the early 1990's in violation, it is alleged, of the defendants' fiduciary duties. The defendants moved for summary judgment on several grounds, including that these two individuals do not have standing to bring this action. A judge in the Superior Court denied their motion, concluding, as to standing, that the plaintiffs "are members of The Mother Church in a special and unique manner separate and distinct from any member of the public."[4] The defendants appealed, and we granted their application for direct appellate review. We conclude under well-settled principles of law long enforced by this court that the plaintiffs do not have standing to obtain judicial redress in this matter. We vacate the ruling of the judge below, and order that this action be dismissed.

1. Central to the plaintiffs' claim is their allegation that the

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[3] The First Church of Christ, Scientist, in Boston, is sometimes referred to as The Mother Church. See *Chase v. Dickey*, 212 Mass. 555, 556 (1912).

[4] Another judge of the Superior Court earlier had denied, in part, the defendants' motion to dismiss and had ruled that the individual plaintiffs could proceed with their action because, he concluded, "the interests of the individual plaintiffs in the enforcement of the by-laws [of the Church] are distinct from the interests of the general public," and "the public interest in the proper adherence to The Mother Church's by-laws is neither directly nor essentially involved."

defendants have failed to abide by two deeds of trust executed by Mary Baker G. Eddy, the founder of Christian Science, and the Church by-laws that are contained in a "Manual of The Mother Church" (Manual), also prepared and executed by Eddy. We summarize the relevant governing documents.

The Church was first organized in 1879 by Eddy and several of her followers under a corporate charter of the Commonwealth, later disbanded. In 1892, Eddy executed a deed of trust (1892 deed) conveying certain land in Boston to four grantees, subject to certain conditions. The deed provided that the grantees would serve as the "Christian Science Board of Directors" (board), a self-perpetuating body,[5] and further provided that the board would cause a church to be built on the land in which to teach the doctrine and practice of Christian Science. The 1892 deed charged the board with numerous other obligations relating to the fulfillment of Eddy's mission for Christian Science. It specified that the congregation worshiping in the church to be built "shall be styled 'The First Church of Christ, Scientist,'" but makes no reference to individual members of the Church. They are not identified as beneficiaries in any respect.

In 1895, Eddy published the first edition of her Manual, including what Eddy identified as the Church by-laws.[6] The bylaws described the officers of the Church, including a "Christian Science Board of Directors," and granted the power to transact all Church business exclusively to the board.[7] Prior to her death in 1910, Eddy

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[5] The 1892 deed specified that "[w]henever a vacancy occurs in said Board the remaining members shall within thirty days fill the same by election." The deed also required that board members be "firm and consistent believer[s]" in Christian Science.

[6] As explained by the defendants, in their view the Manual is "divinely inspired" and the administration of the by-laws is a deeply religious matter, the meaning of which is understood and appreciated "through the application of prayer, an understanding of Christian Science, and a comprehension of Mrs. Eddy's spiritual and governmental design for her Church."

[7] Although the record is not clear, it appears that the "Christian Science

amended the Manual and the by-laws several times. As described by the defendants, after Eddy's death the Manual became the "permanent, unchanged rules of governance" of the Church, with all authority to direct the affairs of the Church resting in the board. See *Eustace v. Dickey*, 240 Mass. 55, 71 (1921) ("the entire management . . . passed into the hands of the directors, a self-perpetuating body, all this at the suggestion and with the approval of Mrs. Eddy"). The Manual grants no voting rights to the members of the Church. See *id.* at 70 ("Members of the church had no voting power").

Article XXIV, § 4 of the by-laws provides for a three-member committee on finance, appointed annually by the board. As described in the Manual, the committee on finance is required to hold quarterly meetings, and its three members are required to "keep themselves thoroughly informed as to the real estate owned by this Church and the amount of funds received by the Treasurer of The Mother Church." The committee on finance is also charged with the responsibility of an annual audit of the Church's finances "by an honest, competent accountant." In the event that the committee on finance determines that there has been any possible "deviation from duty," the Manual charges that it shall "visit the Board of Directors, and, in a Christian spirit and manner, demand that each member thereof comply with the By-laws of the Church." If any director fails to heed this admonition, "he may be dismissed from office and the vacancy supplied by the Board." Thus, the ultimate fiscal responsibility for the Church rests with the board.

In 1898, Eddy executed an additional deed of trust (1898 deed) that established the Publishing Society "for the purpose of more effectually promoting and extending the religion of Christian

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Board of Directors" as Eddy used that term in the Manual, was the same board referred to in the 1892 deed. According to the defendants, in 1903 Eddy increased the number of board members from four to five by amending art. I, § 5, of the Church by-laws. The plaintiffs and the defendants use the terms "board" and "directors" without distinguishing between the 1892 deed and the Manual. See *Eustace v. Dickey*, 240 Mass. 55, 69-71 (1921).

Science." The 1898 deed directs the trustees of the Publishing Society to "account of all the business done by them" and, every six months, to pay over to the Church treasurer "all surplus funds over and above the sum necessary to defray" the Publishing Society's running business expenses. The Publishing Society trustees are charged with the management of all of its operations, subject to the comprehensive and final authority of the board. The 1898 deed does not grant to any members of the Church any beneficial rights. "It is manifest from the structure of the [1898] trust deed as well as from its express words that the single and only design of the founder was to promote and extend the religion of Christian Science as taught by Mrs. Eddy. Every part of the trust deed re-inforces and makes even more plain the avowed purpose of Mrs. Eddy that her sole and completely dominating aim in establishing the trust was to promote and extend the religion of Christian Science as taught by her." *Eustace v. Dickey*, *supra* at 73.

Since its inception the Publishing Society has produced many publications including a daily newspaper, The Christian Science Monitor (since 1908), and various radio programs (since the 1930's). Beginning in the mid-1980's the Publishing Society began pursuing the medium of television as a means of accomplishing its mission. In its fiscal year 1986, the Publishing Society initiated a monthly television program in conjunction with the Independent News Network, which became a weekly program in July 1986. The Church also purchased a Boston-area television station, ultimately investing more than $ 60 million in that venture. From September, 1988, through January, 1992, a daily television program produced by the Church entitled "World Monitor" aired on the cable television's Discovery Channel. In 1991 the Church proceeded with a plan to develop a twenty-four hour television network called "The Monitor Channel." It was launched in May, 1991, and soon began incurring significant losses. From May, 1991, through the end of fiscal year 1992, the Monitor Channel had deficits in excess of $ 30 million. The Monitor Channel ceased broadcast operations in April, 1992.

The defendants claim that these various television ventures were undertaken to "promote" and "extend" Christian Science, to advance the Church's religious interests and to fulfil its mission as described

by Eddy in her 1898 deed. The failure of the television ventures and the accumulation of significant debts in connection with those ventures form the crux of the plaintiffs' allegations against the defendants.

2. We turn to consider whether the plaintiffs have standing to maintain this action. The plaintiffs describe themselves as "life-long members in good standing" of the Church; they do not claim to be members of the Publishing Society. They have never held office in the Church, nor are they directors of the Church or trustees of the Publishing Society. Is their status as members sufficient -- without more -- to confer standing on them?

We begin by stating what may seem entirely obvious: the Church is a public charity, established by Eddy under a series of charitable trusts.[8] The 1892 instrument executed by Eddy conveyed land in trust for the purpose of building a "suitable and convenient church edifice," in which to "maintain public worship in accordance with the doctrines of Christian Science in said church." Her second deed, executed in 1898, granted property in trust to the Publishing Society for "promoting and extending the religion of Christian Science." In addition to these two trusts, in the residuary clause of her will Eddy made a further gift to the Church in trust for the "purpose of more effectually promoting and extending the religion of Christian Science." In *Chase v. Dickey*, 212 Mass. 555, 566 (1912), we concluded that her residuary clause created a charitable trust and that the "[r]elief of spiritual destitution and religious or moral ignorance, intolerance or perversity, is a good public charity." See *Krauthoff v. Attorney Gen.*, 240 Mass. 88, 89 (1921).

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[8] A charitable trust is "a fiduciary relationship with respect to property arising as a result of a manifestation of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose." Restatement (Second) of Trusts § 348 (1959). See *Hillman v. Roman Catholic Bishop of Fall River*, 24 Mass. App. Ct. 241, 242-243 n.3 (1987) (charitable trust is imposition of trust with a specific charitable purpose, as contrasted to gift with general charitable intent).

In the case of a private trust, only a named beneficiary, or one suing on his or her behalf, can maintain an action to enforce a trust. *Collector of Taxes of Lowell v. Slafsky*, 332 Mass. 700 (1955); 3 A.W. Scott & W.F. Fratcher, Trusts §§ 200, 209 (4th ed. 1988). When a trust is charitable, and is created not to benefit one or more individuals but is devoted to purposes that are beneficial to a broader community, the Legislature has determined that the Attorney General is responsible for ensuring that its charitable funds are used in accordance with the donor's wishes; "[t]he attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G. L. c. 12, § 8.[9]

We consistently have held that only the Attorney General can bring an action alleging the misuse of charitable assets. A century ago we noted: "The law has provided a suitable officer to represent those entitled to the beneficial interests in a public charity. It has not left it to individuals to assume this duty, or even to the court to select a person for its performance. Nor can it be doubted that such a duty can be more satisfactorily performed by one acting under official responsibility than by individuals, however honorable their character and motives may be." *Burbank v. Burbank*, 152 Mass. 254, 256 (1890). In *Dillaway v. Burton*, 256 Mass. 568, 573 (1926), we held that it is "the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings. It is his duty to see that the public interests are protected and to proceed in the prosecution or to decline so to proceed as those interests may require."

Five years prior to our holding in *Dillaway*, we concluded with respect to the 1892 and the 1898 trusts at issue in this case that three individuals claiming to be members in good standing of the Church who purported to bring suit "on behalf of themselves and of all other

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[9] According to the defendants, and not challenged by the plaintiffs, the Attorney General has been apprised of these proceedings and has received copies of the relevant pleadings and rulings, but has not sought to intervene in this action.

members of the Church" in order to "preserve and uphold the Church Manual, the form of government of The Mother Church as established by Mary Baker Eddy," lacked standing to litigate their claims; "the plaintiffs show no private interest, and the interests of the public are represented by the Attorney General." *Krauthoff v. Attorney Gen.*, *supra* at 92. More recently, in *Lopez v. Medford Community Ctr., Inc.*, 384 Mass. 163, 167 (1981), we held that it is the Attorney General who has an "exclusive and discretionary role as a protector of the public interest in the efficient and lawful operation of charitable corporations." See *Ames v. Attorney Gen.*, 332 Mass. 246 (1955); *City Bank Farmers Trust Co. v. Carpenter*, 319 Mass. 78, 81(1946).

We have on occasion recognized a private plaintiff's standing to make claims against a public charity, but only where the plaintiff asserts "interests in such organizations which are distinct from those of the general public." *Lopez v. Medford Community Ctr., Inc.*, *supra*. In each such case the claim has arisen from a personal right that directly affects the individual member, such as where the member has a right to exercise a vote in connection with some aspect of the charity's affairs (a right not present here) and is prohibited from doing so. See *Lopez*, *supra*; *Jessie v. Boynton*, 372 Mass. 293, 361 (1977); *Mitchell v. Albanian Orthodox Diocese in Am., Inc.*, 355 Mass. 278 (1969). In *Lopez*, for example, the plaintiffs sought to exercise their right to vote in the corporation's annual election, as explicitly allowed by the corporation's constitution and by-laws. We held that the plaintiffs had standing only to litigate their claim that, because the corporation refused to allow them to vote, they were unlawfully denied membership in the corporation. *Lopez*, *supra* at 168. In that case the plaintiffs had also made claims (similar to those made here) that the defendants had "mismanaged and neglected the affairs of the corporation" and had "improperly borrowed money." *Id.* at 165. We said that they "had no standing to prosecute their claims of corporate mismanagement," *id.* at 169, and that it is "the exclusive function of the Attorney General to correct abuses in the administration of a public charity." *Lopez*, *supra* at 167, quoting *Ames v. Attorney Gen.*, *supra* at 250.

The judge below concluded that the plaintiffs had standing because they "are members of The Mother Church in a special and unique manner separate and distinct from any member of the public." While the plaintiffs' relationship with The Mother Church is indeed different from a member of the public who is not a member of the Church, we have never held that membership in a public charity, alone, is sufficient to give standing to pursue claims that a charitable organization has been mismanaged or that its officials have acted ultra vires. The judge also concluded that, as individual members of the Church, plaintiffs "stand as beneficiaries" of the 1892 and 1898 deeds and the will of Eddy.[10] We have reviewed the various instruments and conclude, as we have in the past, that individual members of the Church are not "beneficiaries" in the sense that they have standing to enforce the provisions of the 1892 or the 1898 deeds of trust, or the terms of Eddy's will. In *Dittemore v. Dickey*, 249 Mass. 95, 106 (1924), we ruled that under the 1892 trust the "intent of the grantor in the deed is plain that she desired the grantees whom she named as directors of the Church to hold this property as officers of churches hold property." In *Eustace v. Dickey*, 240 Mass. 55, 78 (1921), we held that under the 1898 trust the Church "was the beneficiary of all net profits arising from the management of that trust," and that no member of the Church obtained any personal rights in the Publishing Society or its assets. And Eddy did not designate any individual members as her intended beneficiaries in the residuary clause of her will. See *Chase v. Dickey*, 212 Mass. 555, 557 (1912).

The plaintiffs may be of the view that they are "beneficiaries" of Eddy in a religious or theological sense. They have not, however, demonstrated that they are beneficiaries of any of Eddy's trusts in

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[10] The plaintiffs alleged in their complaint that each "is a beneficiary of The Mother Church and of the various wills, trusts and bequests established by Mrs. Eddy and others to fund and maintain The Mother Church." As noted earlier, the defendants previously filed a motion to dismiss. The judge who decided that motion correctly observed that in evaluating the sufficiency of the complaint he was required to accept these allegations as true. *Eyal v. Helen Broadcasting Corp.*, 411 Mass. 426, 429 (1991), and cases cited.

any legal sense. As such, they have no enforceable legal interest in the administration of the charity, and have no standing to pursue such claims. Cf. *Trustees of Dartmouth College v. Quincy*, 331 Mass. 219, 225 (1954). 4A A.W. Scott & W.F. Fratcher, Trusts § 391, at 370-373 (4th ed. 1989); Restatement (Second) of Trusts § 391 & comments c and d (1959).

We vacate the ruling of the judge below denying the defendants' motion for summary judgment, and remand this matter to the Superior Court for entry of a judgment dismissing this action.

So ordered.

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT

SUFFOLK, SS.
SUPERIOR COURT DEPARTMENT

* *

ELIZABETH A. WEAVER and ROY D. VARNER,	*
Plaintiffs,	*
v.	* CIVIL ACTION
HARVEY W. WOOD, VIRGINIA S. HARRIS, JOHN L. SELOVER, OLGA M. CHAFFEE, RICHARD C. BERGENHEIM, AL M. CARNESCIALI, JILL GOODING, JOHN H. HOAGLAND, ANNETTA DOUGLASS, DONALD C. BOWERSOCK, J. ANTHONY PERITON, HALLOCK DAVIS, HARRY SCHIERING and HONOR RAMSAY HILL,	* NO. 93-7320H
Defendants.	*

* *

8-30-95 - DENIED:

Applying the appropriate legal standards pertaining to

Summary Judgment, I am required to draw all inferences from the underlying facts in the light most favorable to the party opposing the motion. Atty. Gen. v. Bailey, 386 Mass. 367, 371 (1982). Also, I am required to resolve against the moving party all doubt concerning the existence of a material fact. Id. It is burden of the moving party to affirmatively demonstrate that the pleadings raise no genuine issue of fact on every material issue, even though the moving party would not have the burden of proof on those issues at trial. Id.; Pedersen v. Time, Inc., 404 Mass. 14, 17 (1988). In summary judgment the non-moving party must establish the existence of a genuine issue of material fact. A genuine issue is defined by the cases as one that exists where the evidence is such that a reasonable fact finder could return a finding for the non-moving party. Anderson v. Liberty Lobby, Inc. 477 U.S. 242, at 249-251 (1986). The Anderson Court speaking through Mr. Justice White, taught that the standard for summary judgment, "mirrors the standard for a directed verdict under Fed. R. Civ. P. 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. Id., at 250. Considering the arguments of counsel and their submissions, I conclude that the plaintiffs who are seeking a declaration pursuant to the Declaratory Judgments Act and an accounting are entitled to a judicial determination on Count I as to whether or not the defendant's restriction on the Finance Committee's powers is ultra vires conduct in violation of the Manual, Art. XXIV, Sec.4.

Moreover, I conclude that the plaintiffs are entitled to a judicial determination that under the 1898 Deed of Trust, the defendant Trustees were prohibited from investing the revenues of the Society for speculative purposes and from incurring liabilities beyond the ability of the Society to liquidate assets promptly to pay indebtedness. Thus the plaintiffs have demonstrated a factual predicate to show that the defendants have engaged in ultra vires conduct in respect to the 1898 Deed of Trust so as to make Count III a triable claim.

It is a further conclusion of this court, that in respect to Count IV, the plaintiffs have demonstrated that they will be able to show factually that they as members are entitled to an accounting of the expenditures made and authorized by the defendant trustees in connection with the disputed media ventures and large transfers from

the Mother Church's pension plans. In a memo filed in this case by Justice Flannery pursuant to a Motion to Dismiss, Justice Flannery articulated in a most scholarly way why the Superior Court had subject matter jurisdiction to adjudicate the claims of the plaintiffs pursuant to Counts I, III and IV of the Complaint. I adopt the teachings and conclusions of law of Justice Flannery without repeating them. Accordingly, I conclude that this is a dispute over the property of the Mother Church; that the Superior Court can properly adjudicate the dispute without violating the First Amendment of the Federal Constitution. I conclude that the plaintiffs have demonstrated sufficient facts to be able, pursuant to the directed verdict test, to put before the trier of fact the issue of whether the Church is congregational, thus permitting a civil court to enforce the governing rules and regulations over property of that church. I agree with Judge Flannery that it is perfectly appropriate for this court pursuant to the declaratory judgments act to judicially review the church's documents to determine property issues. Plaintiffs have produced sufficient facts to demonstrate a triable issue in respect to whether or not the Trustee defendants are in compliance with the essential formalities and procedures prescribed in the Manual, and in the Deeds of Trust. Indeed, the Supreme Judicial Court, early on, in Eustace v. Dickey, 240 Mass. 55, 72, 83-84 (1921) and Dittemore v. Dickey, 249 Mass. 95, 108-109 (1924) clearly enunciated that the civil courts have a duty to determine whether there has been compliance with the essential formalities prescribed by the documents and rules of this very same religious organization. Thus the plaintiffs in their summary judgment motion have amply demonstrated the need for further judicial inquiry into the issues raised by the plaintiffs' complaint.

It is also clear from the submissions that the plaintiffs have standing to bring this action. The facts as shown by the non-moving party is that the plaintiffs are members of The Mother Church in a special and unique manner separate and distinct from any member of the public. Indeed, the plaintiffs have been elected to be members of The Mother Church, and they stand as beneficiaries of the property of The Mother Church as established by the wills and trusts of Mrs. Eddy as donor or settlor. Moreover, the issues raised by these plaintiffs deal with the governance of the Mother Church. Thus as "members" they are lawfully entitled to seek judicial redress

to insure that the defendant trustees comport themselves in accordance with the dictates of the wills, trusts, and Manual of Mrs. Eddy.

The defendant trustees place great legal reliance that if this court takes jurisdiction of the plaintiffs' claims that the court would be violating state and federal constitutional commands. I adopt for the purposes of this Summary Judgment motion the reasoning and rulings of Justice Flannery on the Motion to Dismiss, namely that the claim[] made by the plaintiffs in Count[] I is essentially that the defendant trustees have acted in an ultra vires manner in contravention of the Deeds of Trust and the Church By-Laws. Accordingly this Court can determine if the trustees have complied with the essential formalities prescribed by these governing documents and whether the decision is within the scope of the jurisdiction. Dittemore, supra at 108-109. Similarly, I adopt Justice Flannery's reasoning on Counts III and IV, that the plaintiffs' claims are justiciable because these claims can be resolved without resort to ecclesiastical concerns.

Following Justice Flannery's analysis it is unnecessary for this court to enter into a detailed factual analysis as to the structure of the Mother Church because rather than being concerned on whether the Mother Church is congregational (although this court is satisfied that sufficient facts have been shown on this issue to survive summary judgment), hierarchical, or otherwise, the Superior Court can constitutionally apply the "neutral principles" method.

Accordingly, I rule that the plaintiffs have valid claims for relief, that they have standing to bring them, and that neither the State or the Federal Constitution is an impediment to the limited remedies sought by these plaintiffs.

ORDER

The defendants' motion for summary judgment is DENIED.

/s/ Vieri Volterra
Justice

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. **SUPERIOR COURT**
CIVIL ACTION
NO. 93-7320

ELIZABETH A. WEAVER, ROY D. VARNER, and MEMBERS FOR THE MANUAL, INC.,
Plaintiffs

vs.

HARVEY W. WOOD and others,[1]
Defendants

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION TO DISMISS[2]

Plaintiffs Elizabeth Weaver, Roy Varner, and Members for the Manual, Inc. commenced the instant action against the present and former officers of the First Church of Christ, Scientist, in Boston. In their Complaint, the plaintiffs allege that the defendants engaged in ultra vires conduct by making certain expenditures on media ventures. The plaintiffs seek declaratory and injunctive relief as well as an accounting of those expenditures. The defendants now move to dismiss the Complaint on the grounds that, pursuant to Mass. R. Civ. P. 12(b)(1), this court lacks subject matter jurisdiction

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[1] Virginia S. Harris, John L. Selover, Olga M. Chaffee, Richard C. Bergenheim, Al M. Carnesciali, Jill Gooding, John H. Hoagland, Annetta Douglass, Donald C. Bowersock, J. Anthony Periton, Hallock Davis, Harry Schiering, and Honor Ramsay Hill.

[2] Only defendants Harris, Selover, Chaffee, Bergenheim, Carnesciali, Hoagland, and Douglass move to dismiss the Complaint.

to hear the dispute. Additionally, the defendants contend that the plaintiffs lack standing to challenge the defendants' conduct in the management of their church. For the reasons stated below, the defendants' motion to dismiss is **allowed** in part and **denied** in part.

BACKGROUND

The Complaint alleges the following. In 1879, the Church of Christ, Scientist was formed. Pl. Compl. para. 12. After the execution of a Deed of Trust by Mary Baker Eddy in 1892, which conveyed certain land in Boston in trust for the benefit of the church (the 1892 Deed), the church reorganized as The First Church of Christ, Scientist ("The Mother Church"). Id. In the years that followed, Mary Baker Eddy promulgated by-laws and executed various Deeds of Trust which provided for the governance of The Mother Church. Pl. Compl. para. 13. The by-laws and two of the deeds are published in The Mother Church's constitution, Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts (the "Manual"). Id. Pursuant to the Manual, the business of The Mother Church is conducted by a five-person Board of Directors. Pl. Compl. para. 14. According to Mrs. Eddy, however, the government of the Christian Science denomination is "[e]ssentially democratic, its government is administered by the common consent of the governed, wherein and whereby man governed by his creator is self-governed." Pl. Compl. para. 4, citing The First Church of Christ, Scientist, and Miscellany, 247:2 and 254:24.

Mrs. Eddy also established the Christian Science Publishing Society by Deed of Trust dated January 25, 1898 (the "1898 Deed"). Pl. Compl. para. 16.[3] The 1898 Deed and the Manual established a three-person Publishing Society Board of Trustees "whose function is to superintend the Publishing Society property and to conduct the publishing activities of The Mother Church." Pl. Compl. para. 17. Pursuant to the 1898 Deed, the Trustees may not invest revenues of the Publishing Society "for the purpose of speculation" or incur "liability beyond their ability to liquidate promptly from the current income of business." Pl. Compl. para. 30. Furthermore, the Manual

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[3] The 1898 Deed is incorporated by reference in the Manual. Pl. Compl. para. 16, citing Manual, Art. XXV.

provides that any vacancies on the Board of Trustees are to be filled by the remaining Trustees of the Publishing Society. Pl. Compl. para. 17.

The individual plaintiffs are members of The Mother Church in good standing. Pl. Compl. para. 24. In their Complaint, the individual plaintiffs assert that their status as beneficiaries of The Mother Church and of the various wills, trusts, and bequests established by Mrs. Eddy and others to fund and maintain The Mother Church gives them a distinct interest in the governance and financial affairs of The Mother Church apart from the interest of the public generally. Pl. Compl. para. 24, 25.

The plaintiff, Members for the Manual, Inc., is a Massachusetts corporation comprised of members of The First Church of Christ, Scientist, in Boston, in good standing. Pl. Compl. para. 4. Organized and operated exclusively for charitable, educational, and religious purposes, including the promotion of knowledge and understanding of the Christian Science religion as established by Mary Baker Eddy, the corporation seeks to encourage adherence to the rules and by-laws set forth in the Manual and to prevent and seek restitution for waste, fraud, negligence, abuse of trust or any other improper, unlawful or unauthorized acts in the governance of The Mother Church. Id.

At all significant times pertinent to this controversy, the defendants were or are now officers of the Board of Directors or officers of the Publishing Society of the First Church of Christ, Scientist, in Boston.

The substance of the plaintiffs' Complaint is that during the middle and late 1980s, the defendants[4] caused The Mother Church and the Publishing Society to invest in a series of speculative ventures in magazine publication,[5] radio,[6] and television.[7] Pl.

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[4] Except for Honor Ramsay Hill.

[5] The Mother Church embarked on these media ventures in addition to the already established daily newspaper, The Christian Science Monitor.

With respect to magazine publications, the plaintiffs allege that in 1987, the defendants approved of a monthly magazine, The World Monitor Magazine, the publication of which began in the fall of 1988. Pl. Compl. para. 60- 61. The plaintiffs contend that defendants Hoagland and

Bowersock falsely represented the number of paid subscriptions, and at the 1988 annual meeting, defendant Hoagland falsely stated that the magazine would achieve a profit within a few years, despite the lack of reasonable basis for such a statement. Pl. Compl. para. 61-63. By the end of the 1992 fiscal year, the defendants acknowledged that the deficits and capital expenditures totalled $36.9 million. Pl. Compl. para. 64. As a result, the magazine was closed down after its May 1993 issue. Id.

[6] The plaintiffs aver that in the mid-1980s, the defendants also began news radio programming called Monitor Radio. Pl. Compl. para. 65. The plaintiffs assert that while the defendants have not disclosed losses for Monitor Radio alone, reports from June of 1992 indicate that operating and programming losses for shortwave radio and Monitor Radio were $79 million through the end of fiscal year 1992. Pl. Compl. para 67. The plaintiffs contend that the Monitor Radio venture, like the other media ventures, was well beyond the capacity of The Mother Church to afford given the Church's limited resources. Pl. Compl. para. 67.

[7] Specifically, the plaintiffs allege that in 1985, the defendants caused The Mother Church to undertake a monthly news program, which became a weekly news program in 1986. Pl. Compl. para. 46. The defendants failed to disclose the true costs and prospects of this program and falsely represented that it would be profitable or break even within three to five years. Pl. Compl. para. 47. In June of 1992, the Directors and Treasurer disclosed that the news program had been running at a deficit of $800,000 per month since 1986, and that The Mother Church had incurred deficits and capital costs of $23.7 million on the program. Pl. Compl. para. 48.

The plaintiffs also allege that in 1986, The Mother Church acquired a television station, Channel 68, WQTV, for $7.5 million. Pl. Compl. para. 41. From its inception, Channel 68 lost a significant amount of money which, according to the plaintiffs, the defendants actively concealed by repeated assurances that the station would become profitable. Pl. Compl. para. 42-43. In June of 1992, the Directors disclosed that the station had lost some $61.7 million from the time of its acquisition, far beyond what The Mother Church could afford. Pl. Compl. para. 44-45.

The plaintiffs further assert that in August of 1987, defendant Hoagland recommended the development of a nightly news broadcast with projected costs between $4.7 and $7.6 million a year. Pl. Compl. para. 49. The defendants represented that the World Monitor News program had reasonable prospects of becoming self-supporting, and launched the program in September of 1988 on the Discovery Channel. Pl. Compl. para. 50, 53, 55. During its three and one half years of operation, however, the program earned far below the $100 million in internally projected costs. Pl. Compl.

Compl. para. 35. The plaintiffs allege that these reckless expenditures of millions of dollars by the defendants exhausted The Mother Church's unrestricted fund (the fund available for general Church purposes) and has left the Church effectively insolvent. Pl. Compl. para. 88.[8] The plaintiffs further allege that the defendants improperly transferred and borrowed monies from the Church Pension Plan to fund their speculative media ventures. Pl. Compl. para. 76-77.[9] In doing so, the plaintiffs allege that the defendants

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para. 57. In January of 1992, the defendants terminated the World Monitor program, resulting in a total cost to The Mother Church of $84.7 million, net of revenue. Pl. Compl. para. 59.

Finally, the defendants began planning a new twenty-four-hour cable television station, the Monitor Channel. Pl. Compl. para. 68. The defendants publicly represented that the station would break even within five years, despite failed efforts by the officers of the Publishing Society to interest investors in the cable venture, which should have alerted the defendants that the channel was not economically viable. Pl. Compl. para. 70, 72. Nevertheless, The Mother Church launched the new cable channel on May 1, 1991. Pl. Compl. para. 71. By the end of April 1992, losses and capital expenditures amounted to $89.1 million, which depleted all sources of funding from The Mother Church. Pl. Compl. para. 74. After unsuccessful attempts to sell the cable station in March 1992, the defendants terminated the station in April 1992. Pl. Compl. para. 75. The Church Treasurer estimated close-down costs for both the Monitor Channel and WQTV totalling $65.9 million. Id.

[8] Specifically, the plaintiffs point to the deficit incurred from fiscal year 1987 to June of 1992. While The Mother Church had a surplus of income and contributions over expenditures of $20 million and its unrestricted fund had a balance in excess of $100 million in fiscal year 1987, the media ventures led to deficits totalling $240 million by June, 1992. Pl. Compl. para. 89-90. By April 30, 1992, the Church's unrestricted fund alone had a deficit of $114,698,000. Pl. Compl. para. 93. The plaintiffs thus contend that it was or should have been apparent from the continuing large deficits that The Mother Church's resources were inadequate to support these media ventures, and that they would bankrupt the church. Pl. Compl. para. 92.

[9] The plaintiffs claim that "[f]rom fiscal year 1989 through fiscal year 1992, the defendant Directors then in office, in concert with defendant officers of the media ventures then in office, caused The Mother Church to borrow over $90 million from this Plan to capitalize, and in effect improperly speculate," on the media ventures detailed above. Pl. Compl.

engaged in ultra vires conduct in contravention of the Manual.

Specifically, the plaintiffs allege that the defendants failed to abide by the checks and balances established in the Manual. The by-laws provide for the Finance Committee to oversee the finances and expenditures of The Mother Church and the Board of Directors, with authority to remove Directors. Pl. Compl. para. 26. The plaintiffs contend that the waste of The Mother Church's assets was accomplished by defendants' disregard of the Finance Committee's powers as delineated in the Manual. Pl. Compl. para. 96. For instance, the plaintiffs aver that the Board of Directors promulgated a policy which destroyed the Finance Committee's ability to properly discharge its oversight responsibilities thereby violating the Manual's requirement that the Committee unanimously approve all expenditures. Pl. Compl. para. 96(a). The Manual also provides that any vacancies on the Publishing Society Board of Trustees are to be filled by the remaining Trustees of the Publishing Society. Nevertheless, the plaintiffs allege that Board of Directors has controlled the Publishing Society by filling vacancies. Pl. Compl. para. 17. As a result of the defendants' actions and inactions, the plaintiffs claim that the defendants have and continue to breach the Manual and the 1898 Deed, leaving The Mother Church and its Pension Plan effectively insolvent. Pl. Compl. para. 98.

The plaintiffs fashion their Complaint into four counts. In count I, the plaintiffs allege that the defendants' restriction on the Finance Committee's powers is ultra vires conduct in violation of the Manual, Art. XXIV, Sec. 4, and has resulted in the defendants' ability to expend The Mother Church's resources on speculative, unsound media ventures and to improperly transfer funds. Pl. Compl. para. 100-02.

In count II, the plaintiffs allege that the defendants, "[i]n authorizing or failing to prevent the excessive, unreasonable and

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para. 78. Additionally, over $22.8 million was transferred from the Pension Plan in 1993 to fund severance costs related to the failed media ventures in exchange for the unsecured obligation of The Mother Church and illiquid real estate. Pl. Compl. para. 84, 85. The plaintiffs contend that the defendants sold securities in the Pension Plan without regard to whether such sales were then prudent or appropriate. Pl. Compl. para. 83-85.

wasteful spending on media ventures," have engaged in ultra vires conduct in violation of Art. XXIV, Sec. 5 of the Manual, which provides that "God requires wisdom, economy, and brotherly love to characterize all the proceedings of the members of The Mother Church, The First Church of Christ, Scientist." Pl. Compl. para. 103-05.

Next, the plaintiffs allege that under the 1898 Deed, the defendant Trustees of the Publishing Society were prohibited from investing the revenues of the society for speculative purposes and from incurring liability beyond their ability to liquidate promptly from current income. Pl. Compl. para. 107. By investing in the various media ventures delineated above, the plaintiffs contend, the defendants have engaged in ultra vires conduct in violation of the 1898 Deed of Trust (Count III). Pl. Compl. para. 107-08.

Finally, the plaintiffs seek an "accounting of the expenditures made and authorized by any of the defendants in connection with media ventures and massive transfer of funds" from the Pension Plan (Count IV). Pl. Compl. para. 110.[10]

The defendants now move for dismissal contending that, pursuant to Mass. R. Civ. P. 12(b) (1), the First Amendment precludes this court from adjudicating the present dispute, and that the plaintiffs lack standing to obtain the relief sought. The plaintiffs oppose the motion, contending that under the neutral principles of law approach this court may entertain the present dispute.

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[10] In their prayer for relief, the plaintiffs seek a declaration that all expenditures of The Mother Church's funds must be approved by the Finance Committee pursuant to the Manual by-law, Art. XXIV, Sec. 4, and that defendants have and continue to breach the 1898 Deed prohibiting the Publishing Society from engaging in speculative expenditures and incurring liabilities beyond its ability to liquidate promptly from its current income. Additionally, the plaintiffs request an injunction prohibiting the defendants from engaging in the prohibited conduct. Finally, the plaintiffs seek an accounting of all expenditures made on media ventures, all transfers of funds and loans obtained by The Mother Church, all salaries, benefits, travel expenses, gifts, etc. received by the defendants. The plaintiffs also request that the defendants make available to the Finance Committee information regarding each of the Church's real estate holdings and related financial records as required by the Manual.

Moreover, the plaintiffs claim that their status as members of The Mother Church is sufficient to confer standing.

DISCUSSION

In evaluating the sufficiency of a Complaint, the court must take the allegations of the Complaint, as well as any inference which can be drawn therefrom in the plaintiff's favor, as true. Eyal v. Helen Broadcasting Corp., 411 Mass. 426, 429 (1991), and cases cited. A Complaint is not subject to dismissal if it can support relief under any theory of law. Whitinsville Plaza, Inc. v. Kotseas, 378 Mass. 85, 89 (1979). A motion to dismiss is not an appropriate vehicle for deciding undecided points of substantive law. M. Ascheim Co., Inc. v. Turkanis, 17 Mass. App. Ct. 968 (1983), citing Jenkins v. Jenkins, 15 Mass. App. Ct. 934 (1983).

A. Jurisdiction

The First Amendment, made applicable to the States by the Fourteenth Amendment, provides that "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof. . . ." U.S. Const. amend. I. It is axiomatic that "'the First Amendment prohibits civil courts from intervening in disputes concerning religious doctrine, discipline, faith, or internal organization.'" Fortin v. Roman Catholic Bishop of Worcester, 416 Mass. 781, 785, cert. denied, 114 S. Ct. 2164 (1994), citing Alberts v. Devine, 395 Mass. 59, 72 (1985), and cases cited.[11] Thus, consistent with the First Amendment, courts can not entertain litigation where the issue is "strictly and purely ecclesiastical in character, concerns theological controversy and church government alone, and has no relation to property rights or personal injuries." Moustakis v. Hellenic Orthodox Society of Salem and Peabody, 261 Mass. 462, 467 (1928); accord Mitchell v. Albanian Orthodox Diocese in America, Inc., 355 Mass. 278, 282 (1969) (discussing policy of judicial nonintervention in exclusively or primarily

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[11] Accord Jones v. Wolf, 443 U.S. 595, 602 (1979); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 710, reh'g denied, 429 U.S. 873 (1976); Natal v. Christian and Missionary Alliance, 878 F.2d 1575, 1578 (1st Cir. 1989).

ecclesiastical disputes).

While "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice," merely because a dispute involves a religious organization does not necessarily mean that civil court resolution will jeopardize these values. Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969); see also Madsen v. Erwin, 395 Mass. 715, 722 n.2 (1985) (not every endeavor affiliated, however tenuously, with a recognized religious body qualifies as a religious activity within the protection from governmental involvement afforded by the First Amendment); Feldstein v. Christian Science Monitor, 555 F. Supp. 974, 978 (D. Mass. 1983) ("not every enterprise cloaking itself in the name of religion can claim the Constitutional protection conferred by that status"). Civil courts may permissibly decide church property disputes "so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." Jones v. Wolf, 443 U.S. 595, 602 (1979). See, e.g., Fortin v. Roman Catholic Bishop of Worcester, 416 Mass. 781, 785-86 (role of civil courts in resolving church property disputes limited by First Amendment), cert. denied, 114 S. Ct. 2164 (1994); Wheeler v. Roman Catholic Archdiocese of Boston, 378 Mass. 58, 63, cert. denied, 444 U.S. 899 (1979); Gorodetzer v. Kraft, 360 Mass. 743, 745 (1972). Accord Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709, reh'g denied, 429 U.S. 873 (1976); Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969). Likewise, judicial intervention is permissible where the dispute involves the interpretation of by-laws as they constitute a contract between the church and its members. E.g. Lopez v. Medford Community Center, Inc., 384 Mass. 163, 168 (1981); Jessie v. Boynton, 372 Mass. 293, 303 (1977); Mitchell v. Albanian Orthodox Diocese in America, Inc., 355 Mass. 278, 282 (1969).

In determining whether jurisdiction is appropriate, the Supreme Judicial Court has focused either on the structure of the church or on whether neutral principles of law can be applied to resolve the dispute. Fortin v. Roman Catholic Bishop of Worcester, 416 Mass. 781, 787-88, cert. denied, 114 S.Ct. 2164 (1994); Antioch

Temple, Inc. v. Parekh, 383 Mass. 854, 867 (1981). A congregational church is one in which the local congregation is self-governing, where "authority over questions of church doctrine, practice, and administration rests entirely in the local congregation or some body within it." Primate and Bishops' Synod of the Russian Orthodox Church v. Russian Orthodox Church of the Holy Resurrection, Inc., 35 Mass. App. Ct. 194, 196 (1993), aff'd, 418 Mass. 1001 (1994); accord Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 860 (1981). The First Amendment does not preclude civil courts from enforcing congregational churches' authoritative resolution of a controversy. Primate and Bishops' Synod of the Russian Orthodox Church v. Russian Orthodox Church of the Holy Resurrection, Inc., 35 Mass. App. Ct. 194, 196 (1993), aff'd, 418 Mass. 1001 (1994); Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 860 (1981).

A hierarchical church is one that is "an integral and subordinate member of a larger, general church organization." Antioch Temple, Inc. v. Parekh, 383 Mass. at 861; accord Primate and Bishops' Synod of the Russian Orthodox Church v. Russian Orthodox Church of the Holy Resurrection, Inc., 35 Mass. App. Ct. 194, 196 (1993), aff'd, 418 Mass. 1001 (1994). "[I]n disputes involving hierarchical churches [the] civil courts must tread more cautiously, for the First Amendment permits hierarchical [churches] to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. . . . Civil courts must accept as binding the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization or ecclesiastical rule, custom, or law." Primate and Bishops' Synod of the Russian Orthodox Church v. Russian Orthodox Church of the Holy Resurrection, Inc., 35 Mass. App. Ct. 194, 196 (1993), aff'd, 418 Mass. 1001 (1994) (internal quotations and citations omitted). Accord Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 724-25, reh'g denied, 429 U.S. 873 (1976); Kedroff v. Saint Nicholas Cathedral of the Russian Orthodox Church, 344 U.S. 94, 110 (1952) (describing hierarchical churches); Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 861 (1981); Wheeler v. Roman Catholic Archdiocese of Boston, 378 Mass. 58, 61 (First and Fourteenth Amendments permit hierarchical religious organizations to establish

own rules for internal discipline and government), cert. denied, 444 U.S. 899 (1979).

A church may be hierarchical in certain respects, but congregational in others. Primate and Bishops' Synod of the Russian Orthodox Church v. Russian Orthodox Church of the Holy Resurrection, Inc., 418 Mass. 1001-02 (1994). The determination of a church's structure is a question of fact. E.g. Primate and Bishops' Synod of the Russian Orthodox Church v. Russian Orthodox Church of the Holy Resurrection, Inc., 35 Mass. App. Ct. 194, 197 (1993), aff'd, 418 Mass. 1001 (1994); Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 862 (1981). Such a determination often requires inquiry into church documents. Antioch Temple, Inc. v. Parekh, 383 Mass. at 862.[12]

In the case at bar, the plaintiffs have alleged that The Mother Church's government "is essentially democratic." While the defendants assert that theirs is a hierarchical church, the court must take the allegations of the Complaint, as well as any inference which can be drawn therefrom in the plaintiff's favor, as true. Eval v. Helen Broadcasting Corp., 411 Mass. 426, 429 (1991), and cases cited. Moreover, even where a hierarchical church is involved, judicial intervention is not precluded unless the church maintains an internal system of tribunals for the resolution of the dispute. Wheeler v. Roman Catholic Archdiocese of Boston, 378 Mass. 58, 62, cert. denied, 444 U.S. 899 (1979). Accordingly, a determination of the church's structure and this court's jurisdiction necessarily involves a consideration of the relevant church documents. Such a determination is not appropriate on a motion to dismiss.

Under the neutral principles of law approach, moreover, courts may, consistent with the First Amendment, resolve property disputes by relying exclusively on objective, well-established principles of trust and property law, as under such an approach

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[12] "Examination of such documents is not, in and of itself, an impermissible intrusion into the religious realm. . . . Such a proposition could immunize from judicial review actions of religious organizations when those actions are not properly subject to First Amendment protection." Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 862 n. 10 (1981).

courts are completely free from entanglement in questions of religious doctrine, polity, and practice. Jones v. Wolf, 443 U.S. 595. 602 (1979). Accordingly, courts may examine religious doctrines such as a church constitution, but "must take special care to scrutinize the document in purely secular terms." Id. at 604. Where a deed, charter, etc. employs religious concepts, courts must defer to the authoritative ecclesiastical body for a resolution of doctrinal issues. Id. Where a dispute may be resolved without inquiry into religious doctrine or polity, a court may examine such sources as "'(a) statutory provisions governing the holding of property by religious corporations; (b) the constitution and by-laws of religious organizations involved, especially in so far as they pertain to the ownership and control of church property; and (c) the deeds to the property in question' to resolve the dispute." Fortin v. Roman Catholic Bishop of Worcester, 416 Mass. 781, 786 (1994), cert. denied, 114 S. Ct. 2164 (1994), quoting Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 867 (1981). See also Eustace v. Dickey, 240 Mass. 55 (1921) (finding that directors had power under the terms of the trust to remove the trustee, court held that it could not substitute its judgment for the board).

In the instant case, the plaintiffs allege that in dealing with church property, the defendants engaged in ultra vires conduct in contravention of the church by-laws. Specifically, count I of the plaintiffs' Complaint asserts that the defendants breached Art XXIV, Sec. 4 of the Manual, which provides: "Prior to paying bills against the Church, the Treasurer . . . shall submit them all to said committee [on finance] for examination. This committee shall decide thereupon by a unanimous vote, and its endorsement of the bills shall render them payable." The Manual purports to contain the frame of government of the First Church of Christ, Scientist. Accord Dittemore v. Dickey, 249 Mass. 95, 108 (1924). This by-law does not contain any reference to religious doctrine, polity, and practice. Therefore, the court may inquire as to whether "there has been compliance with the essential formalities prescribed by the rules . . . and whether the decision is within the scope of the jurisdiction." Dittemore v. Dickey, 249 Mass. 95, 108-09 (1924). Since neutral principles of law may be applied to resolve the claim, this court may take jurisdiction. See Jones v. Wolf, 443 U.S. 595, 602 (1979); Fortin v. Roman Catholic Bishop of Worcester, 416

Mass. 781, 787-88, cert. denied, 114 S. Ct. 2164 (1994). Accordingly, the defendants' motion to dismiss count I is denied.

Count II, however, alleges that the defendants failed to abide by the by-law requiring "wisdom, economy, and brotherly love to characterize all proceedings of the members of The Mother Church." Manual, Art. XXIV, § 5. Judicial inquiry into this realm is precluded as it necessarily involves religious concepts. See Jones v. Wolf, 443 U.S. at 602 (where deed, charter, etc. employs religious concepts, courts must defer to the authoritative ecclesiastical body for a resolution of doctrinal issues); Mitchell v. Albanian Orthodox Diocese in America, Inc., 355 Mass. 278, 282 (1969) (discussing policy of judicial nonintervention in exclusively or primarily ecclesiastical disputes); Chase v. Dickey, 212 Mass. 555, 568 (1912) (court refused to resolve controversy concerning use of a gift to the Christian Science Church, finding language of the will which limited the gift required inquiry into religious doctrine). Accordingly, count II of the plaintiffs' Complaint must be dismissed for want of jurisdiction.

In count III, the plaintiffs allege that the defendants engaged in ultra vires conduct in contravention of the 1898 Deed by investing in speculative ventures and incurring liability beyond the church's ability to liquidate promptly from its current income. Because this claim may be resolved without reference to ecclesiastical concerns, it is not beyond this court's jurisdiction. See Jones v. Wolf, 443 U.S. 595, 602 (1979) (courts may resolve church disputes by relying on trust or property law).[13] Accordingly, defendants' motion to dismiss is denied as to count III.

Finally, the plaintiffs seek an accounting of the various expenditures made by the defendants (Count IV). Because an accounting of the media venture expenditures is necessarily

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[13] Where, as here, funds were given to The Mother Church for some specified charitable purpose or for the general purpose of the church, the defendants "hold[ ] the property in trust to carry out the terms and conditions under which it was given and accepted." Wellesley College v. Attorney General, 313 Mass. 722, 724 (1943). Moreover, property conveyed unconditionally to a charitable corporation is impressed with a trust for the accomplishment of the corporation's purposes. Wellesley College v. Attorney General, 313 Mass. 722, 727 (1943).

intertwined with the plaintiffs' claims in counts I and III, the defendants' motion to dismiss count IV is denied.

B. Standing

Standing involves the question of "whether the litigant is entitled to have the court decide the merits of the dispute." Warth v. Seldin, 422 U.S. 490, 498 (1975). In order to have standing, the plaintiff must allege "a personal stake in the outcome of the controversy." Id. at 498. The plaintiff must suffer "some threatened or actual injury resulting from the putatively illegal action." Id. at 499. Standing focuses on the characteristics of the party bringing suit, rather than on the issues raised in the Complaint. Mashpee Tribe v. Watt, 542 F. Supp. 797, 800 (D. Mass.1982), aff'd, 707 F. 2d 23 (1st Cir.), cert. denied sub nom. Mashpee Tribe v. Clark, 464 U.S. 1020 (1983). In dealing with a motion to dismiss for lack of standing, the trial court must accept as true all material allegations of the Complaint, and construe the Complaint in favor of the complaining party. Warth v. Seldin, 422 U.S. 490, 501 (1975).

The defendants assert that the plaintiffs lack standing. In support of this assertion, the defendants contend that The Mother Church is a charity under Massachusetts law and that, pursuant to G.L. c. 12, § 8, the Attorney General has exclusive jurisdiction over the instant action.[14] In opposition, the plaintiffs contend that, as members of The Mother Church in good standing, there "is a real and substantial basis for distinguishing them from the public at large." Pl. Br. at 19. Moreover, as beneficiaries of The Mother Church and its various trusts and bequests, the plaintiffs assert an interest distinct from the general public.

While the Attorney General has the exclusive function of preventing abuses in the administration of funds given to public charities; Elias v. Steffo, 310 Mass. 280, 284 (1941); see also G.L. c. 12, § 8; a private plaintiff possesses standing where his interests are distinct from those of the general public. See Lopez v. Medford

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[14] Section 8 states: "The attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c. 12, § 8.

Community Center, Inc., 384 Mass. 163, 167 (1981) (allegations that defendant charity was being managed in violation of its corporate by-laws regarding membership were properly before court). "The public interest must be directly and essentially, rather than remotely and accidentally, involved as to some distinct issue in order to prevent the cause from proceeding to a decision without the presence of the Attorney General as a party." Eustace v. Dickey, 240 Mass. 55, 86 (1921).

In the instant case, the individual plaintiffs, as members of The Mother Church, have entered into a contract with the church. See Lopez v. Medford Community Center, Inc., 384 Mass. 163, 168 (1981) (corporate by-laws constitute a contract between the church and its members); accord Jessie v. Boynton, 372 Mass. 293, 303 (1977); Mitchell v. Albanian Orthodox Diocese in America, Inc., 355 Mass. 278, 282 (1969). Their Complaint alleges various contractual breaches by the defendants. Although these breaches relate to the proper administration of church funds, the interests of the individual plaintiffs in the enforcement of the by-laws are distinct from the interests of the general public. See Lopez v. Medford Community Center, Inc., 384 Mass. 163 (1981). Moreover, the public interest in the proper adherence to The Mother Church's by-laws is neither directly nor essentially involved. Eustace v. Dickey, 240 Mass. 55, 86 (1921). Where, as here, the court's resolution of the dispute will not directly affect the interests of which the Attorney General in his official capacity is the representative, his absence does not affect this court's jurisdiction. Id. Compare Dillaway v. Burton, 256 Mass. 568 (1926) (donor of property devoted to charitable use had no standing to challenge hospital's management of funds without the presence of the attorney general); Pilgrim Real Estate, Inc. v. Superintendent of Police of Boston, 330 Mass. 250 (1953) (corporation lacked standing to compel defendant to perform a public duty because the plaintiff did not have a special interest in the subject matter independent of the rights of the public generally); Ames v. Attorney General, 332 Mass. 246, 250 (1955) (only attorney general may sue to protect public charitable trusts and to enforce their proper application).

Plaintiff Members for the Manual, Inc., however, does not have a direct and personal interest in the controversy to confer standing. While the corporation was organized to enforce the

by-laws of The Mother Church and to prevent abuses in its governance, the Complaint does not allege any rights or interests of the organization which the defendants have or threaten to violate. Warth v. Seldin, 422 U.S. 490, 499 (1975). Accordingly, plaintiff Members for the Manual, Inc. is not a proper party to this litigation.

ORDER

For the foregoing reasons, the defendants' motion to dismiss is **ALLOWED** as to Count II of the plaintiffs' Complaint. Defendants' motion to dismiss is **DENIED**, however, with respect to Counts I, III and IV. Additionally, plaintiff Members for the Manual, Inc. lacks standing to bring this suit, and is therefore dismissed from the present action.

/s/
J. Harold Flannery
Justice of the Superior Court

DATED: September 14, 1994

APPENDIX D

Supreme Judicial Court for the
Commonwealth of Massachusetts
1412 Courthouse, Boston, Massachusetts 02108
(617) 557-1020

Cerise Lim-Epstein, Esquire
Goodwin, Procter & Hoar
Exchange Place, 53 State Street
Boston, Mass. 02109-2881

RE: No. SJC-07156

ELIZABETH WEAVER & another
vs.
HARVEY W. WOOD & others

NOTICE OF DENIAL OF PETITION FOR REHEARING

The Petition for Rehearing filed in the above captioned case has been considered by the court and is denied.

Very truly yours,

/s/
Jean M. Kennett, Clerk

Dated: August 5, 1997

To: Cerise Lim-Epstein, Esquire
Theodore E. Dinsmoor, Esquire
Allen C.B. Horsley, Esquire
Atty. Stephen M. Shapiro
William L. Patton, Esquire
Suffolk Superior Court Departmen[t]

(2)

Supreme Court, U.S.
FILED
DEC 3 1997
CLERK

No. 97-761

In the Supreme Court of the United States

October Term, 1997

ELIZABETH WEAVER AND ROY VARNER, PETITIONERS

v.

HARVEY WOOD, ET AL., RESPONDENTS

On Petition For Writ Of Certiorari To The Supreme Judicial Court For The Commonwealth Of Massachusetts

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the Massachusetts Supreme Judicial Court's ruling that petitioners have no "personal right" sufficient to support standing to sue under Massachusetts law is reviewable in this Court.

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BRIEF FOR RESPONDENTS IN OPPOSITION

Respondents, who are present or former directors, trustees, or officers of The First Church of Christ, Scientist, or of its publishing arm, The Christian Science Publishing Society, respectfully request that this Court deny the petition for a writ of certiorari.

STATEMENT

In this case two individual members of The First Church of Christ, Scientist ("the Church"), asked the civil courts of the Commonwealth of Massachusetts to intervene in the internal affairs of the Church. They sought declaratory and injunctive relief, and a judicial accounting of Church finances, on the theory that expenditures made by the Church's Board of Directors for the purpose of communicating the Church's message to the world were in violation of the divinely inspired governing documents of the Church written by Mary Baker Eddy, the Discoverer of Christian Science and the Founder of the Church.

The Supreme Judicial Court of Massachusetts ordered dismissal of petitioners' suit. It held, under "well-settled principles" of Massachusetts law governing all churches and charities, that "only the Attorney General can bring an action alleging the misuse of charitable assets" (Pet. App. 3a, 8a), and that a church member has no standing to sue except when "the claim has arisen from a personal right that directly affects the individual member." Pet. App. 9a. The court examined the allegations of the complaint and the governing documents of the Church and concluded, *solely on the basis of state law*, that these petitioners have no such "personal right" and therefore have no standing to bring this case. That state law ruling is not reviewable in this Court.

A. Background

Mary Baker Eddy established the Church in 1879 in Boston, Massachusetts. The governing structure of the Church is set forth in three documents, written by Mrs. Eddy

and understood by Christian Scientists to be divinely inspired. Pet. App. 4a n.6. These documents are the *Church Manual*, which includes the Rules and By-Laws of the Church; an 1892 Deed of Trust, specifying requirements for the building and use of a church edifice and the creation of The Christian Science Board of Directors (the "Board of Directors"); and an 1898 Deed of Trust, establishing The Christian Science Publishing Society (the "Publishing Society").[1/] The Church, which has hundreds of thousands of members worldwide, is governed under the *Manual* by a self-perpetuating Board of Directors, whose appointments, succession, and authority are traced back to original appointments made by Mrs. Eddy in the nineteenth century. Joint App. 318-319, 372.

Contrary to petitioners' assertion (Pet. 6) that Church members have "personal rights * * * to participate in the governance of the church," under the *Church Manual* individual Church members have no right to vote for the Directors or other officers of the Church or its Publishing Society, or to participate in their decisions. The *Manual* establishes for the Church a unique governing structure that bears no resemblance to a "congregational" form of governance. Article XXIII, § 3; Article XXXV, § 1. For example, the *Church Manual* specifies that annual meetings of the

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[1/] The petition contains misstatements of fact and mischaracterizations of the Church's governing structure too numerous to respond to in this brief. The deeds of trust and *Church Manual* are contained in the Joint Appendix filed in the Supreme Judicial Court (cited herein as "Joint App."). The meaning of these foundational documents is authoritatively described in an affidavit filed by The Christian Science Board of Directors (also included in the Joint Appendix). For the convenience of the Court, respondents have lodged with the Clerk copies of the Board of Directors' affidavit, as well as copies of the Complaint and of the briefs that the parties filed in the Supreme Judicial Court.

Church "shall be for listening to the reports of Treasurer, Clerk, and Committees, and general reports from the Field." Article XIII, § 1. "No other than [the Church's] officers are required to be present." *Ibid.*

Although the *Church Manual* does give members of the Church privileges and responsibilities, such as the privilege to form a Christian Science organization at a university or college (Article XXIII, § 8) and the duty to inform the Board of Directors of any perceived failures by the Directors or other officers to discharge their duties (Article I, § 9), the *Manual* does not give members any decisionmaking authority over the management, operations, or policies of the Church or its Publishing Society. Those matters are entrusted to the final decision of the Board of Directors. Pet. App. 4a-5a.

As recognized by the Supreme Judicial Court in this case, under the *Church Manual* Mrs. Eddy designated The Christian Science Board of Directors as the final religious, administrative, and judicatory body within the Church organization. See, *e.g.*, Pet. App. 4a-5a; Joint App. 317; *Eustace* v. *Dickey*, 132 N.E. 852, 857 (Mass. 1921) ("the entire management has passed into the hands of the directors, a self-perpetuating body, all this at the suggestion and with the approval of Mrs. Eddy"). Article I, § 6 of the *Manual* vests authority in the Board of Directors alone to transact the business of the Church. Article I, § 9 empowers the Board to ensure that Church operations are conducted by its officers in compliance with the *Manual*. Mrs. Eddy specifically wrote that "[a]ll" inquiries from Church members which relate "in any manner" to infractions of the *Manual* are to be addressed to The Christian Science Board of Directors. Mary Baker Eddy, *The First Church of Christ Scientist and Miscellany* 223 (1913).

From the earliest days of the Church, publication of certain periodicals—including the Pulitzer-prize winning newspaper *The Christian Science Monitor*, founded by Mrs.

Eddy in 1908—has been a central part of the Church's worldwide mission. Pet. App. 6a; see *Assessors of Boston* v. *Lamson*, 55 N.E.2d 215, 217-218 (Mass. 1944) (recognizing the religious nature of the *Monitor* and the activities of the Publishing Society). The Church has provided substantial funds to its Publishing Society for capital needs and mission activities. See Joint App. 344 (Church funding for publication of the *Monitor* has ranged from 5 million to 20 million dollars a year over the past 20 years). Beginning in 1985, after years of careful study, the Board of Directors initiated a program to expand the Church's periodicals into new print and broadcast media, including a monthly magazine, television, radio, and cable. Petitioners describe this expansion of the Church's publishing activities as if it were undertaken for the purpose of financial gain rather than to further the Church's mission. Pet. 11-13. The Board of Directors, however—responding to the mandate of the *Church Manual* that the Board "see that [the Church's] periodicals are ably edited and kept abreast of the times" (Article VIII, § 14)—determined that the expansion would advance the Church's religious interests and the Publishing Society's mission to promote and extend the religion of Christian Science. Joint App. 317, 345-353.

The Church won many national awards and wide acclaim for the quality of its expanded programs (Joint App. 618-625), but the cost and nature of these operations made them controversial among some members. Eventually, the Church and Publishing Society discontinued most of the new operations in 1992. Pet. App. 6a. At that time, in addition to the regular and usual financial reports presented at annual meetings, the Church prepared and distributed a detailed report on all publishing and broadcasting expenditures over the eight-year period ending in 1992. The Church also made available to members financial statements, audited by Ernst & Young, for fiscal years ending in 1992, 1993, and 1994. This information went far beyond the financial disclosure

required by the *Church Manual*, which mandates only that the Board of Directors report at the annual meeting "the amount of funds which the Church has on hand, the amount of its indebtedness and of its expenditures for the last year." Article XXIV, § 3. The audited financial statements for fiscal 1994, which are part of the record, show that the Church maintained a substantial net worth, its income exceeded expenditures by approximately $12 million, and it had no external liabilities (other than equipment lease and note obligations of $800,000). Joint App. 563-616.[2/]

B. Petitioners' Complaint

In December 1993, after most of the expanded publishing and broadcasting operations had been discontinued and the financial reports provided, two individual Church members—who have no right under the *Church Manual* to participate in any decision on any issue of Church governance, financial management, or publishing policy—brought this suit in Superior Court. The complaint sought a judicial determination that the Directors had mismanaged Church funds and a permanent injunction to restructure the internal governance of the Church. The "Concise Statement of the Facts" filed by petitioners in the Superior Court stated, in its entirety:

> This is an action by members of The First Church of Christ, Scientist, in Boston, seeking injunctive relief,

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[2/] At the June 1997 annual meeting, the Treasurer reported that the Church had $251 million on hand as of April 30, 1997—an increase of $23 million over the previous fiscal year. External indebtedness amounted to $2 million (comprising capital leases on operating equipment), and operating and capital expenditures were $75 million. The total net worth (net assets) of the Church was $485 million. These figures are a matter of public record. Audited financial statements for fiscal years 1995, 1996, and 1997 have also been made publicly available by the Church.

> declaratory relief and an accounting from the Church Directors and others for claimed mismanagement of funds in connection with media ventures.

Joint App. 38. The complaint contained no allegation that the defendants had denied petitioners any personal rights to which they were entitled. Count I of the complaint alleged that the Committee on Finance (a committee on which neither petitioner ever served) had not been permitted to perform its proper functions. Joint App. 32-33.[3/] Count II alleged that the Board had not acted with the "wisdom, economy, and brotherly love" required under the *Church Manual*. *Id.* at 33.[4/] Count III alleged that the expanded communications program constituted an investment for "speculative purposes" and that the Publishing Society trustees had incurred "liability beyond their ability to liquidate promptly from current income." *Ibid.* Count IV prayed for a judicial accounting of Church finances, above

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[3/] Article XXIV, § 4 of the *Church Manual* provides for a Committee on Finance, whose three members are appointed annually by the Board of Directors. The *Manual* requires that "[p]rior to paying bills against the Church, the Treasurer of this Church shall submit them all to [the Committee on Finance] for examination. This committee shall decide thereupon by a unanimous vote, and its endorsement of the bills shall render them payable." Petitioners did not allege that any bills were not submitted to the Committee on Finance, nor that any bills were paid without unanimous vote and endorsement by the Committee. Rather, this count of the complaint was based on the theory that in addition to examining the bills and verifying them for payment, the Committee on Finance should have been given a veto authority over the spending decisions and priorities of the Board of Directors and even the power to remove Directors from office. Complaint, ¶¶ 26-27, 96, 100, Joint App. 15, 31-32.

[4/] Count II was dismissed by the Superior Court (Pet. App. 28a), and petitioners did not appeal that ruling.

and beyond the annual report required by Article XXIV, § 3 of the *Church Manual*. *Id.* at 34. The complaint did not allege that the Directors had failed to provide the Article XXIV report, but was based on the theory that the court should require additional reporting in the interest of "good governance." Plaintiffs' Mem. in Opposition to Motion for Summary Judgment 16, Joint App. 171.

C. Dismissal of the Complaint for Want of Standing

Respondents moved to dismiss the complaint for lack of standing, contending that under Massachusetts law only the Attorney General has standing to bring suit to ensure sound management of charitable organizations, including churches. Defendants' Mem. in Support of Motion to Dismiss 8-18; see Mass. Gen. Laws ch. 12, § 8; *Dillaway* v. *Burton*, 15[illegible] N.E. 13, 15-16 (Mass. 1926); *Lopez* v. *Medford Community Center*, 424 N.E.2d 229, 231-234 (Mass. 1981). Respondents subsequently moved for summary judgment on the same ground. Defendants' Mem. in Support of Motion for Summary Judgment 21-27, Joint App. 140-146.[5/] This was the same argument, based on the same authorities, that would ultimately inform the decision of the Supreme Judicial Court. In responsive memoranda, petitioners addressed the standing point in detail, making arguments based solely on Massachusetts law. Plaintiffs' Mem. in Opposition to Motion to Dismiss 17-21; Plaintiffs' Mem. in Opposition to Motion for Summary Judgment 10-19, Joint App. 165-174. If petitioners believed that acceptance of respondents' standing argument would violate the United States Constitution, they had every opportunity to make the argument. They did not do so.

[5/] Respondents also contended that adjudication of petitioners' claims would be barred by the religious freedom guarantees of the Massachusetts and United States Constitutions. See *infra*, pages 25-28.

In a ruling based on Massachusetts law, Justice Flannery of the Superior Court denied respondents' motion to dismiss, holding that "[a]lthough these breaches [alleged by the complaint] relate to the proper administration of church funds, the interests of the individual plaintiffs in the enforcement of the by-laws are distinct from the interests of the general public." Pet. App. 30a. Similarly, in denying respondents' motion for summary judgment, Justice Volterra ruled on state law grounds that although "the issues raised by [the complaint] deal with the governance of the Mother Church,"[6] petitioners suing "as members" "are lawfully entitled to seek judicial redress to insure that the defendant trustees comport themselves in accordance with the dictates of the wills, trusts, and Manual of Mrs. Eddy." Pet. App. 14a-15a.[7]

On interlocutory appeal to the Supreme Judicial Court, respondents reiterated their argument that petitioners lacked standing to sue under Massachusetts law. Petitioners again responded by disputing respondents' interpretation of Massachusetts precedents. In neither their statement of issues, their summary of argument, nor the body of their brief did petitioners make any claim that the United States Constitution or any federal statute is relevant to this issue of standing under state law. Only in the portion of their brief styled "Conclusion" did petitioners make an oblique, two-sentence reference to the First Amendment's Free Exercise and Establishment Clauses. Brief for Plaintiffs-Appellees, at 49-50. Nowhere in their brief did petitioners even mention

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[6] The First Church of Christ, Scientist, in Boston, Massachusetts, is also known as "The Mother Church."

[7] Both Superior Court judges also rejected respondents' argument that trial of the suit would violate the First Amendment and the cognate provisions of the Massachusetts Constitution.

the Fourteenth Amendment's Due Process and Equal Protection Clauses.

In a unanimous ruling, the Supreme Judicial Court of Massachusetts vacated the ruling below, which had denied respondents' motion for summary judgment, and remanded with instructions to dismiss the complaint for want of standing. The court relied exclusively on Massachusetts law and Massachusetts precedents, and made no reference to any federal issue. The court first held that the Church is a "public charity" under Massachusetts law. Pet. App. 7a. "When a trust is charitable," the court observed, "the Legislature has determined that the Attorney General is responsible for ensuring that its charitable funds are used in accordance with the donor's wishes." Pet. App. 8a. In support of this ruling, the court cited Mass. Gen. Laws ch. 12, § 8 ("the attorney general shall enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof") and six prior decisions of the Supreme Judicial Court, including one decision more than a century old and another decision involving this very Church. Pet. App. 8a-9a. The court explicitly rejected the Superior Court's reasoning that members of a charity have standing simply because they have interests separate and distinct from those of the general public. Pet. App. 10a.

The court noted that it had "on occasion recognized a private plaintiff's standing to make claims against a public charity," but "[i]n each such case the claim has arisen from a personal right that directly affects the individual member, such as where the member has a right to exercise a vote in connection with some aspect of the charity's affairs (a right not present here) and is prohibited from doing so." Pet. App. 9a (citing Massachusetts decisions). In all such cases, the court explained, the plaintiff's claim was limited to the denial of the personal right, and did not extend to general "'claims

of corporate mismanagement.'" Rather, "it is 'the exclusive function of the Attorney General to correct abuses in the administration of a public charity.'" Pet. App. 9a, quoting *Lopez* v. *Medford Community Center, Inc.*, 424 N.E.2d 229, 232 (Mass. 1981), and *Ames* v. *Attorney General*, 124 N.E.2d 511, 514 (Mass. 1946).

Contrary to the petition (at i, 17, 19, 20, 21, 23), the Supreme Judicial Court did *not* hold that only church members with voting rights have standing to sue. Rather, the court held that individuals may sue only to vindicate their personal rights "*such as*" the right to vote. Pet. App. 9a (emphasis added). The court further held, based on its examination of the complaint and of the Church's governing documents, that petitioners had asserted no such "personal right." In particular, the court rejected petitioners' argument that they had standing to sue in order to enforce their own understanding of the *Church Manual* (citing *Krauthoff* v. *Attorney General*, 132 N.E. 865 (Mass. 1921)) or as "beneficiaries" of the 1892 or 1898 trusts or of Mrs. Eddy's will. Pet. App. 9a-10a. "We have reviewed the various instruments and conclude, as we have in the past, that individual members of the Church are not 'beneficiaries' in the sense that they have standing to enforce the provisions of the 1892 or the 1898 deeds of trust, or the terms of Eddy's will." Pet. App. 10a. The court cited three earlier decisions involving this Church, all reaching the same conclusion: *Dittemore* v. *Dickey*, 144 N.E. 57, 61 (Mass. 1924); *Eustace* v. *Dickey*, 132 N.E. 852, 860 (Mass. 1921); *Chase v. Dickey*, 99 N.E. 410, 411-412 (Mass. 1912). The court also cited the *Restatement (Second) of Trusts* and *Scott on Trusts* for these basic principles of state law. Pet. App. 11a.

In a petition for rehearing before the Supreme Judicial Court, petitioners for the first time articulated their current argument that this application of long-established standing law violates the United States Constitution. The petition for

rehearing was denied unanimously and without opinion. Pet. App. 32a.

REASONS WHY THE PETITION SHOULD BE DENIED

Under well-settled principles, addressed most recently in *Adams* v. *Robertson*, 117 S. Ct. 1028, 1029-1031 (1997), the decision of the Supreme Judicial Court is not reviewable by this Court because petitioners neither raised their federal claim in the state courts nor did the Supreme Judicial Court pass upon any federal issue. The Supreme Judicial Court discussed only Massachusetts principles of standing and cited only state law precedents. Whether petitioners have a personal interest sufficient to support standing to sue under Massachusetts law depends entirely on construction of the governing documents of the Church, which, petitioners concede (Pet. 2, 26-28), is a matter of Massachusetts law. See Pet. 26 ("the Deeds and Manual must be construed according to Massachusetts law"). Because no issue of federal law was raised by petitioners in Superior Court, or on a timely basis on appeal—and none was decided by the Supreme Judicial Court—the federal issue presented in the petition has not been preserved and this Court lacks jurisdiction to review that issue.

Even if this Court had jurisdiction, the petition should still be denied because it depends entirely upon a palpable misconstruction of the Supreme Judicial Court's decision. The jumble of constitutional claims asserted by petitioners rests on the notion that the Supreme Judicial Court held that standing turns upon "the *form* of personal right to participate in church governance." Pet. 21; see Pet. i, 19-24. But the Supreme Judicial Court held no such thing. It held that individual church members may sue only to vindicate personal rights, and that petitioners, who are not personal beneficiaries of Mrs. Eddy's trusts or will, have failed to assert the violation of any personal rights under governing Church documents. Pet. App. 9a-10a. The premise of the

petition is therefore faulty—indeed, it is an exercise in deception. Not one of the constitutional issues asserted by petitioners is actually raised by the decision below.

Furthermore, this case satisfies none of the traditional criteria for certiorari. The question of what rights petitioners have is determined under Church documents which, petitioners acknowledge, are interpreted under Massachusetts law. Pet. 26-28. Massachusetts courts have repeatedly held that these documents create no personal rights in Church members to vote or otherwise to participate in the management or operations of the Church organization. Pet. App. 9a-10a. Petitioners admit that courts in other jurisdictions must apply Massachusetts law when they are called on to interpret Church documents, so no conflict could ever develop on this state law issue. Pet. 27. And petitioners have not even attempted to identify any conflict between state supreme courts on any federal issue. The cases from other jurisdictions that petitioners allege to be in conflict with the Supreme Judicial Court's ruling (Pet. 24-26) turn on state standing law, not federal constitutional law. Moreover, none of these cases reaches a result different from the one here on any factually similar record; each decision acknowledges the same basic principles of standing law.

Petitioners concede that questions of standing require "case-by-case assessment" of the facts and circumstances. Pet. 22. Interpretation of the foundational documents of this particular Church and evaluation of the fact-bound question whether petitioners have standing are obviously not proper subjects for this Court's review. This Court does not grant certiorari to second guess opinions of state supreme courts on the meaning of trusts, wills, and by-laws, or to review routine applications of state-law rules of standing.

Review is also unwarranted because petitioners' suit asks the courts to exercise authority over matters of internal Church governance in a manner that would plainly violate the

First Amendment. Petitioners would have the courts reallocate decisionmaking authority and reengineer Church polity by overruling The Christian Science Board of Directors' determinations under the Church's divinely inspired foundational documents. This Court's precedents make clear that civil courts may not constitutionally interfere in matters of church government by overriding the views of a church body vested with final authority to interpret a church's governing documents. *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696 (1976). Ultimately, therefore, petitioners could not prevail in their suit even if they were accorded standing.

I. The Federal Constitutional Questions Were Neither Properly Raised By Petitioners In The Court Below Nor Addressed By That Court In Its Opinion.

Petitioners contend that the principles of state standing law on which the decision below rested violate the First and Fourteenth Amendments to the United States Constitution. Pet. i. But that argument was not raised by petitioners in Superior Court, or on a timely basis on appeal; nor was any federal issue addressed by the Supreme Judicial Court. The petition should therefore be denied for want of a properly presented federal question. 28 U.S.C. § 1257; see *Adams* v. *Robertson*, 117 S. Ct. 1028, 1029 (1997); *Hill* v. *California*, 401 U.S. 797, 805 (1971); Robert L. Stern, et al., *Supreme Court Practice* §§ 3.15-3.17, at 116-130 (7th ed. 1993) (hereinafter cited as "Stern & Gressman").

For purposes of invoking this Court's certiorari jurisdiction to review the decision of a state court, the litigant must have "specially set up or claimed" a federal title, right, privilege, or immunity (28 U.S.C. § 1257), in a timely and proper manner, in accordance with the applicable state procedural law. *Adams*, 117 S. Ct. at 1030; *Exxon Corp.* v. *Eagerton*, 462 U.S. 176, 181 n.3 (1983); *Michel* v. *Louisiana*, 350 U.S. 91, 93 (1955); Stern & Gressman, *supra*, at

117. Where, as here, the highest state court has failed to pass upon a federal question, "it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Board of Dirs. of Rotary Int'l* v. *Rotary Club of Duarte*, 481 U.S. 537, 550 (1987) (citations omitted); see also *Adams*, 117 S. Ct. at 1029. Petitioners have made no such showing; indeed, they have ignored the jurisdictional issue.

Rule 14.1(g)(i) of this Court's Rules requires a petitioner seeking review of a state court decision to specify in the statement of the case "the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts." Despite being filed by experienced counsel, the petition does not even attempt to comply with Rule 14.1(g)(i). The petition's sole reference to the presentation or disposition of the federal question is a brief reference on page 16 of the petition, which fails to satisfy the Rule in several respects: (1) it makes no mention of whether or how the federal question was raised in the court of first instance, (2) it does not explain the method or manner in which the question was raised, and (3) it does not describe the way in which the federal question was passed upon by either the court of first instance or the appellate court. If there is any reason to justify petitioners' procedural default, petitioners should have set it forth in the petition so that respondents would have an opportunity to respond.

Massachusetts decisions consistently hold that issues not presented and resolved at the trial level need not be considered on appeal. *E.H.S.* v. *K.E.S.*, 676 N.E.2d 449, 450 (Mass. 1997); *Royal Indemnity Co.* v. *Blakely*, 360 N.E.2d 864, 865 (Mass. 1977). See, e.g., *Commissioner of Correction* v. *McCabe*, 576 N.E.2d 654, 656 n.7 (Mass. 1991)

("This issue was not raised in the Superior Court; it is not properly before us"); *Moloney* v. *Boston Five Cents Savings Bank FSB*, 663 N.E.2d 811, 815 (Mass. 1996) ("We do not generally reach issues not discussed below"). This rule applies with equal force to constitutional arguments. See *E.H.S.*, 676 N.E.2d at 450; *Sugarman* v. *Board of Registration*, 662 N.E.2d 1020, 1026 (Mass. 1996); *Axelrod* v. *Board of Assessors*, 466 N.E.2d 517, 520 (Mass. 1984). A narrow exception exists only where a party did not have an opportunity to present an issue to the lower court and where it was fully briefed and argued on appeal by the parties (*Atlas Tack Corp.* v. *DiMasi*, 637 N.E.2d 230, 233 (Mass. App. 1994))—neither of which prerequisites is even arguably satisfied here.

Throughout this case, the issue of standing was litigated solely as a question of state law. In the Superior Court, petitioners made no mention of any possible federal constitutional bar to application of Massachusetts standing law. This was not for want of opportunity. Respondents made the standing argument both in a motion to dismiss and again in a motion for summary judgment, relying on the same reasoning and the same precedents that later informed the decision of the Supreme Judicial Court. If petitioners believed that acceptance of those arguments would lead to a violation of the United States Constitution, they were obligated under well-established Massachusetts law to raise the objection on a timely basis so that the Superior Court would be able to address it. *E.H.S.*, 676 N.E.2d at 450; *McCabe*, 576 N.E.2d at 656 n.7; see, *e.g.*, *Rotary Club*, 481 U.S. at 550; *Beck* v. *Washington*, 369 U.S. 541, 550 (1962).

In the Supreme Judicial Court, petitioners devoted 13 pages of their brief to the standing issue without even mentioning any supposed federal constitutional claim or citing any federal decision. See Brief for Plaintiffs-Appellees, at 36-49. Every case they cited was a Massachusetts case,

relying solely on state law. Petitioners did not see fit to mention any of the non-Massachusetts cases they now claim are in "conflict" with the decision below. Their argument was based entirely on interpretation of Church documents, which they concede is governed by state, not federal, law. Pet. 2 ("construction of the documents governing The Mother Church will always involve Massachusetts law"). Neither their statement of issues presented for review, their table of contents, nor their argument gave any indication of a federal constitutional dimension to the standing question.

Only on page 49 of their brief in the Supreme Judicial Court, in the section of their brief styled "Conclusion," did petitioners make any reference to a federal right. This was little more than a rhetorical flourish, without explanation or elaboration. It was not sufficient to put anyone on notice that they were making a constitutional argument, still less to provide notice of the substance of a constitutional contention. See *Adams*, 117 S. Ct. at 1030-1031 & n.3 ("passing invocations" of federal rights in briefs to state supreme court are insufficient to preserve federal issue for this Court's review); *Rotary Club*, 481 U.S. at 550 n.9 (a "casual reference to a federal case" is "insufficient to inform a state court that it has been presented with a [federal] claim"). Even then, petitioners did not mention the Equal Protection or Due Process Clauses, which are invoked in the petition at 20-21. As a matter of Massachusetts law, petitioners' fleeting and generalized statement in their "Conclusion" was insufficient to raise the issues they now ask this Court to rule upon. *Sugarman*, 662 N.E.2d at 1026 (First Amendment argument was not "adequately raised" by "a one-page conclusory statement"); *Commonwealth* v. *Doe*, 544 N.E.2d 860, 863 (Mass. 1989). The complete absence of any discussion of or reference to federal constitutional issues in the thorough opinion of the Supreme Judicial Court confirms that it did not find any such issues to be properly raised by petitioners.

To be sure, petitioners raised the federal question, after a fashion, in their petition for rehearing. But it is well settled that this is insufficient unless the state court actually entertains the petition and expressly decides the question. *Adams*, 117 S. Ct. at 1031 n.3; *Rotary Club*, 481 U.S. at 550. There is an exception to this rule if the federal question is generated by an unexpected decision of the highest state court, giving the litigant no prior opportunity to anticipate or assert the particular federal question. *PruneYard Shopping Center* v. *Robins*, 447 U.S. 74, 85 n.9 (1980); Stern & Gressman, *supra*, at 129. Here, however, petitioners can claim no surprise. The standing issue was explicitly raised in the motion to dismiss, the motion for summary judgment, the petition for interlocutory review, and the opening brief of respondents in the Supreme Judicial Court. That court's decision was based on "well-settled principles of law long enforced by [the Supreme Judicial Court]." Pet. App. 3a. Indeed, this is at least the fourth time in this century that the Supreme Judicial Court has held that members of The First Church of Christ, Scientist, lack standing to assert claims for judicial intervention in the governance of the Church. See *Krauthoff* v. *Attorney General*, 132 N.E. 865, 865-866 (Mass. 1921); *Eustace* v. *Dickey*, 132 N.E. 852, 864 (Mass. 1921); *Chase* v. *Dickey*, 99 N.E. 410, 416 (Mass. 1912). If petitioners believed this well-established line of cases, explicitly invoked by respondents, raised a federal constitutional question, they had every opportunity to say so.

Petitioners' presentation of the federal issue therefore was defective on two independent grounds: failure to raise the issue at all in the Superior Court, and failure to raise it properly in the Supreme Judicial Court. "In these circumstances, it would have been perfectly reasonable"—indeed, standard practice under Massachusetts law—"for [the Supreme Judicial Court] to conclude that the * * * federal claim was not before it." *Adams*, 117 S. Ct. at 1031. Petitioners have failed to rebut the presumption that the

Supreme Judicial Court did not pass upon the federal issue because "the issue was not properly presented" (*id.* at 1029; *Rotary Club*, 481 U.S. at 550), and the petition should therefore be denied for want of a properly presented federal question.

II. The Constitutional Questions Raised By The Petition Are Entirely Spurious.

In addition—even apart from the procedural default discussed in Section I—the petition for certiorari should be denied because it is frivolous. It is based on a tortured misstatement of the holding of the Supreme Judicial Court. That decision rested entirely on state law, and raises no federal question.

The premise of the petition is that the holding of the Supreme Judicial Court "discriminates unconstitutionally among [religious] adherents based upon the very structure of internal governance of the church to which they belong" by "decreeing that a church member who is aggrieved by a governance violation has standing where he or she has been denied a right to *vote* conferred by a church by-law * * *, *but* that church members have *no* standing when they are aggrieved by a governance violation that infringes upon *other* kinds of specific, church by-law-conferred personal rights." Pet. 19 (emphases in original).

That premise is false—and obviously so. The court below did not discriminate among religious bodies and adherents, but instead applied a rule of standing that is equally applicable to all churches and charities: viz., that only the Attorney General has standing to bring suit to ensure proper governance. Pet. App. 8a.[8/] Nor did the court discriminate between voting rights and other personal rights.

[8/] Petitioners concede that "the rule adopted by the S.J.C. purports to apply to all public charities." Pet. 22.

The court held that an individual member of a charity may sue only to vindicate a personal right "such as" the right to vote, but has no standing to raise generalized claims of corporate mismanagement. Pet. App. 9a.

Even if petitioners had a right to vote, this case would have come out the same way. In *Lopez* v. *Medford Community Center, Inc.*, 424 N.E.2d 229 (Mass. 1981), cited and discussed by the court below at Pet. App. 9a, the Supreme Judicial Court granted members of a charitable organization standing to challenge the corporation's refusal to allow them to vote, but denied them standing to make claims of corporate "mismanagement." As the court below observed, the corporate mismanagement claims rejected in *Lopez* are "similar to those made here" (Pet. App. 9a), and they received the same treatment, notwithstanding the fact that the plaintiffs in *Lopez* had a right to vote.

Petitioners' real quarrel with the Supreme Judicial Court is that the court ruled that they have not demonstrated the violation of any "personal right that directly affects [them]." Pet. App. 9a-11a. That conclusion, however, raises no federal issue: it is simply a fact-bound application of state law to the circumstances of this case, as revealed in the complaint and in the governing documents of the Church, which, petitioners concede, "must be construed according to Massachusetts law." Pet. 26.

Although petitioners attempt to cast their complaint as one involving personal rights "to participate in church governance" (Pet. 19), the complaint and the Church's governing documents make clear that no such rights are involved in this case. Count I of the complaint asks for a determination of the relative powers of the Board of Directors and the Committee on Finance, with no allegation that petitioners have ever served on either body. The dismissal of count II has not been appealed. Count III is a claim that the communications mission of the Church should be viewed as

an unduly "speculative" investment, and that the Publishing Society improperly incurred liabilities beyond its ability to pay. Count IV asks for a judicial accounting of Church finances. None of these counts makes any reference to the personal rights of petitioners, and the court below, based on a careful examination of Church governing documents, concluded that petitioners have "no enforceable legal interest in the administration of the charity, and have no standing to pursue such claims." Pet. App. 11a.

Petitioners offer the Court a grab-bag of constitutional claims. See Pet. 20-24. But since all of them are predicated on the same misconstruction of the holding of the Supreme Judicial Court, all are irrelevant. Petitioners contend, first, that the Massachusetts standing rule "discriminates in providing access to courts based on the way in which one has exercised his or her Free Exercise right of religious association." Pet. 20. This, they say, violates due process and equal protection. Under an accurate reading of the decision below, however, there is no such "discrimination." No individual member has standing to sue a public charity over alleged mismanagement, unless he or she has thereby been deprived of a specific "personal right," which petitioners have not alleged. Pet. App. 9a; see *Lopez*, *supra*. This ordinary rule of standing applies to *all* churches and *all* public charities, whatever their form of organization. There is no unequal access to the courts, and thus no due process or equal protection issue.[2/]

[2/] Petitioners rely upon a line of this Court's decisions culminating in *M.L.B.* v. *S.L.J.*, 117 S. Ct. 555 (1996), which prohibits a state from conditioning an indigent's access to court on the payment of fees or charges, or from discriminatorily imposing fees on only a narrow class of litigants. Pet. 20-21. These decisions are not even remotely relevant. Under the neutral standing principles applied by the Supreme Judicial Court, petitioners have no standing to challenge management of the Church's finances because (unlike the

Second, petitioners contend that the decision below is a "direct" violation of the Free Exercise and Establishment Clauses because it denies members of the Church the ability to enforce "legal obligations" through the civil courts. Pet. 21. Again, this is a blatant mischaracterization of the holding below. The court did not deny anyone the right to enforce "legal obligations"; the court held that under Massachusetts law these petitioners do not possess any personal rights that a court could enforce.

Third, petitioners contend that the decision below "has altered the Church from the one envisioned by Mrs. Eddy * * * to one with an all-powerful, self-perpetuating Board of Directors." Pet. 23. But the decision below does no such thing. It simply limits standing to sue to the Attorney General, for the entirely legitimate purpose of "protecting public charities from being called upon to answer to proceedings instituted by individuals, with or without just cause, who have no private interests distinct from those of the public." *Dillaway* v. *Burton*, 153 N.E. 13, 16 (Mass. 1926).

Finally, petitioners claim that the Massachusetts standing rule "discriminates among religions." Pet. 23. This claim is based on petitioners' false assertion that the decision below treats voting rights differently from other personal rights. Nothing in the court's opinion supports that interpretation. Standing to sue does *not* depend on "the form of personal rights to participate in church governance," but on whether the plaintiffs have been denied any "personal right" at all.

There is no federal issue in the case.

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litigants in the cases cited in the petition) they have no personal rights at stake in this litigation. Their interests are protected by the Attorney General of the Commonwealth of Massachusetts.

III. Prudential Considerations Also Caution Against Granting The Petition.

Even if there were a properly presented federal question, this case is completely uncertworthy. Furthermore, to decide the case on the merits would entangle the Court in the internal affairs of the Church, in violation of the First Amendment.

As is evident from a reading of the decision below, this case turned entirely on the particular facts and allegations of the complaint and the court's unexceptional interpretation of Church documents. Notwithstanding petitioners' rhetoric about the Supreme Judicial Court's "novel and unprecedented" standing rule (Pet. 27), which, they say, "alter[s]" and even "nullif[ies]" the Church's governing structure (Pet. 23, 28), the decision below is entirely consistent with numerous prior decisions regarding the structure of The First Church of Christ, Scientist, as well as other charities. On at least four occasions in the past, the court has recognized the final authority of The Christian Science Board of Directors over the affairs of the Church and the lack of any personal interest on the part of members to sue over governance issues. *Dittemore* v. *Dickey*, 144 N.E. 57, 61 (Mass. 1924); *Eustace* v. *Dickey*, 132 N.E. 852, 860 (Mass. 1921); *Krauthoff* v. *Attorney General*, 132 N.E. 865 (Mass. 1921); *Chase* v. *Dickey*, 99 N.E. 410, 411-412 (Mass. 1912).

The decision below is consistent with these prior decisions of the Supreme Judicial Court and with the authoritative determinations of the Board of Directors, which is the only body authorized under the *Church Manual* to finally resolve matters of Church governance. Far from "effectively abolish[ing] the church created by the Founder of Christian Science, and establish[ing] in its place a new one" (Pet. 2), the decision below respects and preserves Mary Baker Eddy's divinely inspired form of government for her Church.

Moreover, as petitioners acknowledge, the merits of standing claims necessarily involve a case-by-case examination of particular facts, which would be of little value to other courts or litigants. See Pet. 22 ("[d]etermining whether there is standing of course requires a case-by-case assessment of the interests alleged to be infringed"). This Court obviously should not grant certiorari to resolve such fact-bound issues, which turn on the construction of the *Church Manual*, trust deeds, and wills—and which could have no general precedential importance.

Petitioners' assertion of a conflict with the courts of other jurisdictions is frivolous. First, there can be no conflict among the lower courts over the meaning of Massachusetts law. Only the Supreme Judicial Court can settle such issues. It would be a matter of no moment if different states had adopted different rules of standing for litigation regarding charitable organizations. In addition, the supposed conflict here is nonexistent. The rule of standing applied below—limiting standing to challenge alleged misgovernance of charitable organizations to the Attorney General—is typical of that applied throughout the United States. See, *e.g.*, *Carl J. Herzog Found.* v. *University of Bridgeport*, 699 A.2d 995, 997-998 (Conn. 1997); *Hinton* v. *City of St. Joseph*, 889 S.W.2d 854, 858 (Mo. App. 1994); *In re De Long*, 565 N.Y.S.2d 569, 570 (App. Div. 1991); *Nacol* v. *Texas*, 792 S.W.2d 810, 812 (Tex. App. 1990); *Hardman* v. *Feinstein*, 240 Cal. Rptr. 483, 485 (App. 1987); IVA Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 391, at 370-373 (4th ed. 1989); *Restatement (Second) of Trusts* § 391 & comment c (1959).

The state court decisions cited by petitioners (Pet. 24-26) rest on the same general standing principles—derived from the same trust law doctrines—that were applied by the Supreme Judicial Court in this case and in *Lopez*, and on a fact-specific inquiry into the "interests alleged to be

infringed." Pet. 22. In each case, the court determined that the party asserting standing had a direct and special interest recognized by state law—a "personal right" in the terminology employed by the Supreme Judicial Court—in the property in dispute in the litigation. In none of the cases alleged by petitioners to create a "conflict" were the facts remotely similar to those involved here.

In one group of cases cited by petitioners, the would-be litigant's personal right derived from a trusteeship or official position held in the church. See *Gray* v. *St. Matthews Cathedral Endowment Fund, Inc.*, 544 S.W.2d 488, 491 (Tex. Civ. App. 1976) (appellant had standing "to intervene in existing litigation [to which] the attorney general is a party," where he was "a former Vestryman who remains contingently liable for certain debts of the parish" and a trustee under articles and by-laws "which were rescinded by the settlement of which he complains"); *United Church of God, Inc.* v. *McLendon*, 344 S.E.2d 373, 375 (N.C. App. 1986) ("a duly appointed trustee" of a church had standing to "maintain [an] action as a trustee for the recovery of property which was originally deeded to that church"). In another group of cases, the courts determined that, in the particular circumstances, members of a congregation were beneficiaries of a trust with a direct interest in the disputed property. Thus, in *Mt. Jezreel Christians Without A Home* v. *Board of Trustees*, 582 A.2d 237, 239 (D.C. 1990), members of a congregation were the beneficiaries of a trust created "for the purpose of * * * holding * * * services at the church building on the southeast corner of Fifth Street and E Street," and as such had standing to sue to challenge church trustees' closure and sale of that church building. The small size of a congregation has also led some courts to the conclusion that each member of the congregation had a certain and definite interest in the enforcement of the trust. See *Crocker* v. *Stevens*, 435 S.E.2d 690, 693-695 (Ga. App. 1993) (members of a 23-person congregation had standing to

petition for dissolution of the nonprofit corporation and disposition of its assets after church ceased operation); see also *Gray*, 544 S.W.2d at 491 (trust was for the benefit of the Cathedral's parishioners, who were "a small, easily identifiable group").

Petitioners in this case, by contrast, "have never held office in the Church, nor are they directors of the Church or trustees of the Publishing Society." Pet. App. 7a. Church membership is large and international in scope; and the *Church Manual* establishes for the Church a unique governing structure. See Joint App. 325; Pet. 13; *supra*, at pages 2-3. And after reviewing the 1892 and 1898 deeds of trust and Mary Baker Eddy's will, the Supreme Judicial Court determined "that individual members of the Church are not 'beneficiaries'" of those instruments in any legal sense and confirmed earlier decisions that no member of the Church has been granted personal rights in Church property. Pet. App. 10a.

Furthermore, for the civil courts to assume jurisdiction to decide this case on the merits would itself violate the First Amendment. As this Court has repeatedly held, churches have the right to establish, interpret, and enforce their own rules of governance, without interference from civil authorities. *Presbyterian Church* v. *Hull Memorial Presbyterian Church*, 393 U.S. 440, 448 (1969); *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952); see Laurence H. Tribe, *American Constitutional Law* 1241 (2d ed. 1988) (in "disputes over religious doctrine, administration, or organization—a civil court can discharge its duty in only one way: by

accepting the decisions of the proper church authorities as it finds them").[10/]

A civil court may not "substitut[e] its interpretation of the [church] constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation. This the First and Fourteenth Amendments forbid." *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 721-722 (1976); accord *Jones* v. *Wolf*, 443 U.S. 595, 604, 609 nn.7 & 8 (1979). In this Church, the tribunal vested with final authority to interpret and enforce the *Church Manual* is The Christian Science Board of Directors. The First Amendment does not permit courts to second guess this authoritative governing body on issues of Church governance or doctrine.

Nor would it be constitutional for a civil court to second guess the wisdom of expenditures made by the Church to spread its message to the world. Petitioners claim that the Church's expanded communications program was "imprudent" (Pet. 12) and that these expenditures should be treated as an "investment" rather than as part of the communications mission of the Church. These questions are not appropriate for civil adjudication. Churches have the constitutionally protected right "to define and carry out their religious

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[10/] This principle, which originally was recognized as part of the federal common law, became constitutional doctrine in the 1950s. That explains why earlier decisions of the Supreme Judicial Court sometimes resolved cases involving internal church organization, rather than deferring to the highest church tribunal. See cases cited at Pet. 28-29. Since, in every case involving this Church, the court upheld the determinations of the Directors under Church documents, there was no practical difference. In this case, petitioners ask the courts to interfere with internal organization by overruling the judgment of the Directors regarding the meaning of the Church's inspired governing documents. That truly would be unprecedented.

missions." *Corporation of Presiding Bishop* v. *Amos*, 483 U.S. 327, 339 (1987). This includes the right to determine spending priorities without interference from the state. See *Lemon* v. *Kurtzman*, 403 U.S. 602, 621-622 (1971); *Rizzuto* v. *Rematt*, 653 N.E.2d 34, 35-38 (Ill. App. 1995) ("It is eminently clear that the basis of this lawsuit is to have the courts examine the way the Church is managing its financial affairs; to substitute the prudence of a court's judgment for that of the Trustee and Archbishop who is entrusted by Church doctrine to exercise such judgment; [and] to impose court supervision over all financial matters of an entire religious faith. * * * These matters, however, are beyond the realm of judicial jurisdiction"); *Basich* v. *Board of Pensions*, 540 N.W.2d 82, 85-88 (Minn. App. 1995) (holding that a civil court may not evaluate the prudence of a church's administration of its pension fund where investment decisions were made, in part, on the basis of the moral and religious aims of the church).

Precisely for these reasons, a national coalition of eighteen church and other organizations interested in preserving religious liberty filed an *amicus* brief in support of the Church in the court below.[11/] *Amici* objected that a court's

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[11/] The signatories to the *amicus* brief were Americans United for Separation of Church and State; American Jewish Congress; General Assembly of the Presbyterian Church (U.S.A.); Baptist Joint Committee on Public Affairs; The Church of Jesus Christ of Latter-Day Saints; Church of the Nazarene; The Christian Legal Society; The Episcopal Diocese of Massachusetts, Inc.; Evangelical Lutheran Church in America; General Conference of Seventh-Day Adventists; Massachusetts Council of Churches; The National Association of Evangelicals; The National Council of the Churches of Christ in the U.S.A.; The New England Conference of the United Methodist Church; The Reorganized Church of Jesus Christ of Latter-Day Saints; Unitarian Universalist Association; The United States Catholic Conference; and Worldwide Church of

consideration of the merits of petitioners' claims "would chill free exercise by other religious organizations" and "be devastating to religious liberty" because "[c]hurches can have no prophetic voice if every controversial expenditure is subject to judicial review." Brief *amicus curiae* of Americans United for Separation of Church and State, et al., at 21-22.

Petitioners contend that "civil courts are permitted to resolve disputes over church polity and administration * * * so long as doing so does not require resolution of 'underlying controversies over religious doctrine.'" Pet. 29. However, this Court has long held that churches have the constitutional right to "decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff*, 344 U.S. at 116; see also *Serbian*, 426 U.S. at 710 (the Constitution bars judicial inquiry into "church polity and church administration"). In cases where different church governing bodies have colorable competing claims to church property, it is sometimes necessary for civil courts to examine church governing documents to the extent necessary to determine which of the competing claimants has authority to speak for the church. But it would violate the First Amendment for civil courts to second guess the interpretations of The Christian Science Board of Directors—the body charged by the *Church Manual* with responsibility for finally resolving all questions of compliance with the *Manual*—at the behest of individual members with a contrary view of how the Church should be governed.

This Court should avoid those constitutional pitfalls by allowing the Supreme Judicial Court's decision to stand.

God. A copy of the *amicus* brief has been lodged with the Clerk for the Court's convenience.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1997

Supreme Court, U.S.
FILED
DEC 12 1997
CLERK

No. 97-761

In the

Supreme Court of the United States

October Term, 1997

ELIZABETH WEAVER AND ROY VARNER,

Petitioners,

v.

HARVEY WOOD, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

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December 12, 1997

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ARGUMENT

Respondents devote most of their brief in opposition to mistaken procedural claims and misguided prudential arguments. There is little to these arguments besides respondents' own surprisingly overheated rhetoric. To the extent respondents do engage petitioners' argument on the merits, they refuse to acknowledge the change in Massachusetts law wrought by the opinion of the Supreme Judicial Court ("S.J.C.") below, and the devastating consequences that it will have on the method of governance chosen for Christian Science by Mrs. Eddy.

Nothing in the brief in opposition undermines petitioners' argument that review is warranted here: Massachusetts, unlike other states, now would deny standing to petitioners solely on the basis of the form taken by their rights to participate in the governance of their church. The rule articulated by the S.J.C., which violates petitioners' rights under the Religion Clauses as well as the Due Process and Equal Protection Clauses, can be corrected only by this Court. And, because this decision of Massachusetts' highest court will apply to the governing documents of The Mother Church in litigation wherever conducted, the decision below is of profound importance to the entire Christian Science denomination and thus to the nation.

A. Petitioners' Federal Claims Were Properly Raised Below

Respondents rely primarily on what they describe as a "procedural default" by petitioners below. Opp. 18. They claim that the federal issues here were not properly raised below and that this Court consequently lacks jurisdiction under 28 U.S.C. § 1257.

Respondents' contention is flatly incorrect. In this case, petitioners claimed before the S.J.C. that failure to permit this suit to go forward would violate both Religion Clauses of the First Amendment. Respondents characterize petitioners' arguments below as "little more than a rhetorical flourish," Opp. 16, but this self-serving assessment has no significance. In their brief before the S.J.C. petitioners in fact argued:

> Without access to the relief provided by the founder and "Leader" of the Church, and now sought by the [petitioners], it will be they, not the [respondent] directors, officers and trustees, who will be deprived of the First Amendment right of free exercise of their religion.

Petitioners' S.J.C. Br. at 49. Petitioners also argued in reliance on *Serbian Orthodox Diocese* v. *Milivojevich*, 426 U.S. 696, 734 (1976), that

> to prohibit involvement by the Superior Court in this matter will itself, by mandating judicial inaction, "create far more serious problems under the Establishment Clause."

Id.

Under 28 U.S.C. § 1257, "a federal claim cannot be considered by the Court unless it has been *either* raised in the state court *or* considered and resolved by the state court." Stern, Gressman, Shapiro & Geller, *Supreme Court Practice*, § 3.17 at 122 (7th ed. 1993) (hereinafter cited as "Stern & Gressman"). This Court may consider any federal claim that was "properly presented to[] the state court that rendered the decision we have been asked to review." *Adams* v. *Robertson*, 117 S.Ct. 1028, 1029 (1997).

Here, petitioners' federal claims under the Free Exercise and Establishment Clauses were properly before the S.J.C. Although those claims had not been pressed in the trial court, the rule in the S.J.C. is that the party that *prevailed* in the trial court may rely on *any* ground in support of affirmance, "even relying on a principle of law not argued below." *Aetna Casualty & Surety Co.* v. *Continental Casualty Co.*, 604 N.E.2d 30, 33 (Mass. 1992). Thus although, as petitioners made clear in the very first sentence of their Statement of the Case, the S.J.C. decision was "couched as merely a denial of standing under state law," Pet. 2, the preservation of petitioners' federal claims for review by this Court is beyond doubt. "When the highest state court is silent on a federal question before us," the "presumption" that the issue was not properly presented is defeated by a "demonstrat[ion] that the state court had 'a fair opportunity to address the federal question that is sought to be presented here.'" *Adams*, 117 S.Ct. at 1029 (citation omitted).

Petitioners do make *arguments* in support of their claims that were not contained in their brief before the S.J.C. But as respondents' counsel are surely aware — they include the co-author of the leading book on Supreme Court practice — it is well settled that in this Court "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992); see also *Leebron* v. *National Railroad Passenger Corporation*, 513 U.S. 374, 378-380 (1995).

Petitioners present four arguments for reversal on the merits before this Court. Two of them *are the very arguments quoted above* made in petitioners' brief before the S.J.C. See Pet. 21-23 (argument sub-points b and c). The two others are based on the discrimination *among* religions wrought — unexpectedly — by the remarkable line implicitly drawn by the S.J.C. in the opinion from which petitioners now seek review. One of these arguments is made under the Establishment Clause. See Pet. 23-24 (argument sub-point d). This is plainly just a new argument in support of the Establishment Clause claim that petitioners had clearly presented to the S.J.C. The other, that made under *M.L.B.* v. *S.L.J.*, 117 S.Ct. 555 (1996), is that the decision below unconstitutionally burdens petitioners' Free Exercise rights by denying them access to court solely on the basis of the way their religion is organized. See Pet. 20-21 (argument sub-point a).

Because of its context — it involves denial of access to courts — this particular type of Free Exercise violation at the same time runs afoul of the Due Process and Equal Protection Clauses, and petitioners do rely here on those provisions. But the constitutional violation is dependent on interference with an "associational right[]," 117 S.Ct. at 564, in this case the Free Exercise right to practice one's religion according to its Founder's chosen means of structuring members' participation in church governance.

This argument — which, this Court has said, defies "easy slogans or pigeonhole analysis," 117 S.Ct. at 566 (internal quotation marks and citation omitted) — amounts only to a new argument in support of petitioners' Free Exercise claim. But even if it were construed as a new *claim* — one under the Due Process and Equal Protection Clauses — it would *still* be properly before this Court. For "this Court has held federal claims to have been adequately presented

even though not raised in lower state courts when the highest state court renders an unexpected interpretation of state law or reverses its prior interpretation." *PruneYard Shopping Center* v. *Robins*, 447 U.S. 74, 85-86 n. 9 (1980).

In such cases, petitioners are required only to make their argument to the state court at the first available moment. In this case, the argument based on discrimination among religions is a response to the surprising decision of the S.J.C. to treat adherents of different religions differently for standing purposes depending upon nothing more than the form of their rights to participate in their church's governance, regardless of the relative significance of those rights. See Pet. 19. As respondents acknowledge, petitioners made their discrimination argument before the state court in the petition for rehearing, Opp. 17, the first possible opportunity. This suffices to bring that argument, even if it is viewed as a new "claim", properly before this Court. See Stern & Gressman § 3.17 at 129.

Respondents do contend that "petitioners can claim no surprise." Opp. 17. But the only thing that respondents say should not have surprised petitioners was a ruling on "the standing issue." Opp. 17. Respondents do *not* — and could not — contend that the line in effect drawn by the S.J.C. among religions was something that petitioners could have anticipated before the S.J.C.'s decision issued. (They *do* argue that no such line was even implicitly drawn, but about this they are patently incorrect. See *infra* at 4-6.) There is thus nothing to respondents' argument that the federal claims are not properly before this Court.[1]

B. The Decision of the S.J.C. Discriminates Among Religious Adherents in Precisely the Way Described in the Petition

1. On the merits, respondents urge that the S.J.C. did not articulate a rule that operates to discriminate among religious bodies and

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[1] Contrary to respondents' assertion, Opp. 14, petitioners are of course in compliance with this Court's Rule 14.1(g)(i). The petition both specifies the stage in the proceedings in which the federal constitutional claims were raised, Pet. 16, and details the manner in which they were disposed of by the S.J.C. Pet. 16-18.

adherents. They argue that the court below "instead applied a rule of standing that is equally applicable to all churches and charities: viz., that only the Attorney General has standing to bring suit to ensure proper governance." Opp. 18. Indeed, respondents call our description of the S.J.C. opinion, among other things, a "palpable misconstruction," Opp. 11, and even, at one point, "an exercise in deception." Opp. 12.

With all respect, we stand by our description of the S.J.C.'s opinion. That opinion is of course in the appendix for the Members of this Court to read. It does *not* hold "that only the Attorney General has standing to bring suit to ensure proper governance." Opp. 18. Rather, as even respondents ultimately concede, "[t]he court held that" — although petitioners here were *denied* standing — "an individual member of a charity may sue . . . to vindicate a personal right 'such as' the right to vote." Opp. 19.

The S.J.C. did *not* find, as respondents would have it, that petitioners were not "denied any 'personal right' at all." Opp. 21. As the petition demonstrates, petitioners *do* have rights and obligations under the *Manual*, including obligations to oversee both Church officers in the performance of their duties, see Pet. 7, and the Directors' compliance with the By-Laws. *Id.* Petitioners have been unable to discharge these obligations because respondents have deprived them of their rights under the *Manual* to an accounting of Mother Church funds, *id.*, and a functioning Committee on Finance. Pet. 8.

The language from the S.J.C. respondents misleadingly quote in support of their contention that the S.J.C. found petitioners without *any* rights in Church governance actually concludes solely that petitioners have no enforceable rights under "the provisions of the 1892 or the 1898 deeds of trust, or the terms of Eddy's will," Opp. 10 (quoting App. 10a). With respect to the *Manual*, the S.J.C. opinion concludes *only* that petitioners lack the "personal right that directly affects the individual member, such as . . . a right to vote in connection with some aspect of the charity's affairs," that would be required under the decision below to confer standing. App. 9a

And indeed in this Court respondents do not even address the array of rights- and obligation-conferring by-law provisions described in detail in the petition. Pet. 3-9. Rather, they assert only that "individual Church members have no right to vote for the

Directors or other officers of the Church or its Publishing Society, or to participate in their decisions." Opp. 2. But petitioners' point is precisely that they need not be given rights in the form of the right to vote or to participate in the decisionmaking process of the Board or of the Publishing Society in order to have personal rights to *participate in church governance* that may be vindicated in a civil court.[2]

In cases such as *Mitchell* v. *Albanian Orthodox Diocese*, 244 N.E.2d 276, 279 (Mass. 1969), the S.J.C. has permitted church members who have been given a right to vote by church by-laws to proceed with suits alleging that the by-laws have not been complied with. In this case, however, solely because petitioners have been given rights to participate in the governance of the Church *other* than the right to vote, suit was not permitted. Pet. 19. The decision below thus *does* discriminate precisely as described in the petition.

The S.J.C. may in the future find standing based on abridgement of *some* participatory rights in church governance other than the right to vote — rights that the S.J.C. may conclude are encompassed by its reference to "right[s] . . . such as . . . a right to vote." See Pet. 19. But the denial of standing in this very case demonstrates — contrary to respondents' suggestion, Opp. 10 — that the S.J.C.'s language granting standing to those with rights "such as" the right to vote does *not* bring within its sweep all religious adherents with specific, by-law created personal rights to participate in their church's governance.

2. Nor does the decision below represent simply a reiteration of some longstanding conclusion of Massachusetts state law that the Christian Science Board of Directors has "final authority . . . over the affairs of the [Mother] Church" — that is, authority over

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[2] Respondents do cite a "wr[iting]" of Mrs. Eddy, Opp. 3, that provides that "inquiries" relating to infractions of the *Manual* "should be addressed to the Christian Science Board of Directors and not to the Pastor Emeritus," i.e., not to Mrs. Eddy herself. Mary Baker Eddy, *The First Church of Christ Scientist and Miscellany* 223 (1913). This obviously has nothing whatever to do with the specific By-Law provisions that explicitly regulate Church governance. See, *e.g.*, *Manual* Art. I. § 9 (Church members obligated to bring complaints of By-Law infringement by the Directors to the Church *Clerk* for adjudication).

interpretation of all *Manual* provisions and of the scope of the participatory rights given members by the *Manual* — and that members "lack any personal interest . . . to sue over governance issues." Opp. 22. The S.J.C. has never before addressed either the rights conferred upon members of The Mother Church by the By-Laws and other foundational documents of the Church, or the scope of the Board of Directors' power to construe those documents.

The cases cited by respondents, Opp. 17, 22, are not to the contrary. Indeed, only one of them, *Krauthoff* v. *Attorney Gen.*, 132 N.E. 865 (Mass. 1921), even *addresses* the standing of any church members to sue over an issue of church governance.[3] And, as described in the petition, Pet. 18 n.13, that case stands only for the unremarkable proposition that where "plaintiffs show no private interest," they will be found to have no standing to pursue their claim. See 132 N.E.2d at 866. *Krauthoff* turned on the inadequacy of the bill of complaint in that case, not upon any assessment of the interests conferred upon Church members by the *Manual* — interests that were not examined by the S.J.C. there at all.

Nor do the other cases cited in the opposition stand for the proposition that the Board of Directors has final authority over interpretation of the provisions of the *Manual*. Indeed, although unreviewable Board authority will be the *effect* of the S.J.C. decision below if it is not reversed, the S.J.C. decision did *not* — despite respondents' wishful description of the opinion — construe the *Manual* to say that "The Christian Science Board of Directors [is] the final religious, administrative, and judicatory body within the Church organization." Opp. 3 (citing App. 4a-5a).

Eustace v. *Dickey*, 132 N.E. 852, 860 (Mass. 1921), described the

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[3] *Eustace* v. *Dickey*, 132 N.E. 852, 864 (Mass. 1921), held only that a single justice was not required to permit Church members to intervene in a suit between Directors and Publishing Society Trustees when they filed their motion "about two months after the reservation of the case for decision by the whole court" and the "case was pending before the full court." *Chase* v. *Dickey*, 99 N.E. 410, 416 (Mass. 1912), did not involve members of the Church at all. It does say that "[a]ll parties who can have an interest in the trust are before the court," but that statement was relevant only to the question before the court of the validity of the residuary clause of Mrs. Eddy's will.

Board as "possessed of authority to control the affairs of the church." But it did not suggest that this authority was comprehensive. Indeed, it went on to say — consistent with the text of the *Manual*, see Pet. 6 — that the "Board of Directors was clothed with extensive powers concerning [the Church's] *management*," *id.* (emphasis added), not the interpretation of the secular legal documents used by Mrs. Eddy to divide powers within the Church government. Similarly, *Dittemore* v. *Dickey*, 144 N.E. 57, 61 (Mass. 1924), held only that the Board of Directors is capable of "hold[ing] . . . property as officers of churches hold property." *Chase* v. *Dickey*, 99 N.E. 410, 411-12 (Mass. 1912), respondents' final case, did not even hold, but merely assumed *arguendo*, that the Board of Directors' "duties are similar to those of deacons or wardens of churches or religious societies."

3. Much of the brief in opposition consists of nothing more than a confusing conflation of the even-handed rule concerning claims of financial mismanagement of public charities with the very different rule articulated by the court below concerning governance violations. See Opp. 18, 19, 20, 23. It is undoubtedly true that, under Massachusetts law, a mere claim of mismanagement of a public charity can be brought only by the Attorney General of the State. And that is, presumably, true with respect to all public charities, including all churches deemed public charities under state law. But that is not the type of claim even arguably raised by Counts I and IV of the complaint, which allege violations of petitioners' rights under the By-Laws contained in the *Manual*. See Pet. 10.

4. Respondents also argue that the decision below would have come out the same way in the other jurisdictions whose decisions were cited in the petition. Opp. 24. They argue that a Texas case and one from North Carolina are distinguishable on the ground that the plaintiff in each had "a trusteeship or official position . . . in the church." Opp. 24. The plaintiff's standing in *Gray* v. *Saint Matthews Cathedral Endowment Fund, Inc.*, 544 S.W.2d 488 (Tex. Civ. App. 1976), however, was explicitly *not* decided on that basis. See *Gray*, 544 S.W.2d at 491 (plaintiff "need not have an interest different from the other parishioners or pewholders"). And the language quoted in the petition from the intermediate appellate court decision in *United Church of God, Inc.* v. *McLendon*, 344 S.E.2d

373, 375 (N.C. Ct. App. 1986), describes the venerable holding of the North Carolina Supreme Court in *Nash* v. *Sutton*, 23 S.E. 178, 179 (N.C. 1895), that "an individual member of a religious society" has an interest in having church property put to the purposes for which it was designed "sufficient to enable him to bring an action to protect the common interests of fellow members," a holding respondents do not even allege has been disturbed.

In any event, respondents cannot make even this weak argument with respect to the other jurisdictions cited in the petition. They rely instead on nothing more than the number of members in each church involved, suggesting that petitioners would not have had standing in those jurisdictions essentially because "[Mother] Church membership is large." Opp. 25.

But, as even the S.J.C. acknowledged, App. 10a, members of The Mother Church are distinct from the general public, and there is, of course, no reason to think that the decisions cited in the petition apply only to *small* churches. Indeed, we can think of few more obviously irrelevant distinctions between the petitioners here and the members of the churches at issue in those other cases.

5. Finally, respondents urge that certiorari should be denied because there can never be a split in authority with regard to the standing of members of The Mother Church. Opp. 23. But this characteristic of the decision below — its finality and its consequence for this entire denomination — clearly argue in this case *in favor of*, not against, a grant of review. See Pet. 26-28.

C. There Can Be No Constitutional Objection Here to This Court's Exercise of Its Certiorari Jurisdiction

Finally, respondents argue that prudential concerns about "entanglement" in the internal affairs of the Church counsel against granting certiorari. But, because Mrs. Eddy intended that members should have recourse to civil courts for resolution of disputes requiring construction of the secular terms of the *Manual*'s By-Laws, these concerns are insubstantial. See Pet. 28-30. Respondents' argument depends entirely on their assertion that "the tribunal vested with final authority to interpret and enforce the *Church Manual* is The Christian Science Board of Directors." Opp. at 26; see also *id.* at 28 (describing the Board of Directors, without citation, as "the body charged by the *Church Manual* with

responsibility for finally resolving all questions of compliance with the *Manual*"). For this proposition, remarkably, respondents offer only what they call an "authoritative" description of "the meaning" of the Church's organizational documents contained in an affidavit filed, no less, by this very Board of Directors — i.e., by respondents themselves. See Opp. 2 n.1.[4]

As the petition demonstrates conclusively, however, and with citation to relevant provisions of the *Church Manual* — provisions that respondents do not even deign to address — that is *not* the structure of governance set up by Mrs. Eddy. The manifestly secular provisions that provide for reports to be given at the Church's annual meeting, and those that describe the tasks to be performed by the Committee on Finance, to give just two examples, were intended — like the very trust documents that created The Mother Church — to be construed by the civil courts in case of dispute. See Pet. 28-29. Indeed, respondents do not deny that Trustees and Directors, *including some of the respondents*, have in the past invoked the civil courts to construe the terms of the *Church Manual*, Pet. 29, something that would be unthinkable were the Directors truly the "highest ecclesiastical tribunal" respondents now claim it to be. Opp. 26. Civil court adjudication on the merits of this case would not abridge the First Amendment. On the contrary, it is a *refusal* to adjudicate this controversy merely because it involves religion that would clearly violate the Constitution.

CONCLUSION

If anything, the brief in opposition reveals that the Board of Directors understands that the S.J.C. decision places in its hands unreviewable ecclesiastical authority within the Christian Science religion. See Opp. 3. This is certainly not what Mrs. Eddy intended, and before the decision of the civil court below permanently alters the structure of her Church, and permanently disadvantages adherents of Christian Science in every jurisdiction, it should be reviewed by this Court.

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[4] The other provisions and decisions on which respondents apparently intend to rely, Opp. 3, on their face do not support respondents' description of the purported interpretive role of the Board of Directors.

Respectfully submitted,

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December 12, 1997